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IN THE

Supreme Court of the United States

CITY OF AKRON and JOHN V. FRANK, MARCO SOMMERVILLE, JOHN W. VALLE, ROBERT G. KONSTAND, GERALD HOLLAND, NANCY HESLOP, and CHARLES WALKER,

Petitioners,

v.

BRUCE KILBY, MIKE PARSONS, PATRICIA LONGVILLE, GREGORY D. COLERIDGE, and "YES ON ISSUE 11 CAMPAIGN,"

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

By citizen initiative petition, the Charter of the City of Akron was amended in 1998 to impose dramatically low limits on contributions to council and mayoral candidates — $100 every two years to ward council candidates and $300 every four years to mayoral and at-large council candidates, in a city of over 200,000 residents. In addition, the initiative petition required that all contributors disclose their home addresses. The District Court found both provisions to be unconstitutional in accordance with the Court's ruling in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976). *Frank v. City of Akron*, 95 F. Supp. 2d 706 (N.D. Ohio 1999). (App., *infra*, 18a-60a)

The Sixth Circuit majority reversed, over two dissents (one to the majority opinion and another in response to the Sixth Circuit's denial of *en banc* review) that found the majority opinion to rely on "grandiose statements and general philosophizing" and "too cavalier in upholding governmental intrusion" on First Amendment values. *Frank v. City of Akron*, 290 F.3d 813, 820 (6th Cir. 2002) (Gillman, J., dissenting in part) (App., *infra*, 12a-17a); *Frank v. City of Akron*, 303 F.3d 752, 752 (6th Cir. 2002) (Boggs, J., dissenting from denial of rehearing *en banc*). (App., *infra*, 63a-67a) Accordingly, this Court is now faced with the following questions:

1. Does the First Amendment prohibit the unprecedented contribution limitations of $300 per election cycle of four years and $100 per election cycle of two years in a city of over 200,000 people?

2. Does the First Amendment prohibit contribution limitations which are so low that they operate as *de facto* expenditure limitations on political activity?

3. Does the First Amendment further prohibit the unprecedented provision that requires all campaign contributors to make public disclosure of their home addresses?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are as follow:

Petitioners, Plaintiffs-Appellees-Cross-Appellants below, are: John V. Frank, Marco Sommerville, John W. Valle, Robert G. Konstand, Gerald Holland, Nancy Heslop, and Charles Walker. (These persons will be referred to collectively herein as "Plaintiffs.")

Petitioner, Defendant-Appellee below, is the City of Akron.

Respondents, Intervenors-Appellants below are: Bruce Kilby, Mike Parsons, Patricia Longville, Gregory D. Coleridge, and "Yes on Issue 11 Campaign."

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties to the Proceedings	iii
Table of Contents	iv
Table of Cited Authorities	vi
Table of Appendices	x
Opinions Below	1
Statement of Jurisdiction	1
Constitutional and Statutory Provisions Involved	1
Statement of the Case	2
Reasons for Granting the Petition	13
I. The Sixth Circuit Opinion Constituted A Radical Departure from Prior Decisions, Creating a Split Amongst the Circuits Regarding How Low Contribution Limitations May Be Set That Must be Resolved.	13
II. This Court's Decisions in *Buckley* and *Shrink Missouri* Must be Reevaluated to Determine the Limits of the Legislature's Ability to Limit Political Contributions, Especially in Light of this Court's Pending Consideration of *FEC v. Beaumont* and its Future Consideration of the Bipartisan Campaign Reform Act of 2002.	23

Contents

Page

III. The Sixth Circuit Erred in Ruling that the Home Address Disclosure Provisions of the Akron Charter Amendments were Constitutional. 27

Conclusion 30

TABLE OF CITED AUTHORITIES

Page

Cases:

Beaumont v. FEC, 278 F. 3d 261 (4th Cir. 2002) .. 24

Bloch v. Ribar, 156 F.3d 673 (6th Cir. 1998) 27

Boos v. Barry, 485 U.S. 312, 108 S. Ct. 1157, 99 L. Ed. 333 (1988) 2

Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) ... i, 9, 13, 19, 20, 23, 25, 26

California Prolife Council PAC v. Scully, 989 F. Supp. 1282 (E.D. Cal. 1998) 2, 15

Carver v. Nixon, 72 F.3d 633 (8th Cir. 1995) ... 2, 9, 14, 15

Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994) 9

FEC v. Beaumont, No. 02-403, 2002 U.S. LEXIS 8465 (U.S. Nov. 18, 2002) 23, 24, 26

FEC v. Colorado Republican Fed. Campaign Comm., 533 U.S. 431, 121 S. Ct. 2351, 150 L. Ed. 2d 461 (2001) 21, 22

Cited Authorities

Page

Frank v. City of Akron, 95 F. Supp. 2d 706 (N.D. Ohio 1999) ..... i, 1, 9, 10, 14, 17

Frank v. City of Akron, 290 F.3d 813 (6th Cir. 2002) ..... i, 1, 11, 12, 18, 20, 22-23, 24

Frank v. City of Akron, 303 F.3d 752 (6th Cir. 2002) ..... i, 1, 12, 20

Kentucky Right to Life v. Terry, 108 F.3d 637 (6th Cir. 1997) 24

Landell v. Sorrell, 118 F. Supp. 459 (D. Vt. 2000) ... 16

Landell v. Vermont Public Interest Research Group, 300 F.3d 129 (2d Cir. 2002) 16

McConnell v. FEC, No. 02-582 (D.D.C. 2002) 25

Montana Right to Life Assoc. v. Eddleman, 306 F.3d 874 (9th Cir. 2002) 16

National Black Police Ass'n v. Dist. of Columbia Bd. of Elections and Ethics, 924 F. Supp. 270 (D.D.C. 1996) 15-16

New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 686 (1964) 2

Nixon v. Shrink Missouri Gov't PAC, 528 U.S. 377, 120 S. Ct. 897, 145 L. Ed. 2d 886 (2000) ..... *passim*

Cited Authorities

Page

Russell v. Burriss, 146 F.3d 563 (8th Cir. 1998) .. 14, 15, 17

SEIU v. Fair Political Practices Comm., 955 F.2d 1312 (9th Cir. 1992) 2

United States Constitution:

First Amendment ..... i, ii, 1, 2, 4, 10, 24

Fourteenth Amendment 2, 4

Statutes:

2 U.S.C. § 431(13)(A) (2000) 27

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1291 3

28 U.S.C. § 1294 3

28 U.S.C. § 1331 3

28 U.S.C. § 1343 3

28 U.S.C. § 1367 3

28 U.S.C. § 2201 3

28 U.S.C. § 2202 3

Page

Ohio Rev. Code Ann. §§ 3517.10(B)(4)(b)(1), (F)(1) (West 2000) 27

Other Authority:

11 C.F.R. § 100.12 (2000) 27

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Sixth Circuit Dated And Filed May 22, 2002 ..... 1a

Appendix B — Memorandum Opinion And Order With Judgment Entry Dated And Filed December 2, 1999 ..... 18a

Appendix C — Amended Order Of The United States Court Of Appeals For The Sixth Circuit Dated And Filed September 9, 2002 ..... 61a

Appendix D — Order Of The United States Court Of Appeals For The Sixth Circuit Dated And Filed August 22, 2002 ..... 70a

Appendix E — Charter Amendment 72a

OPINIONS BELOW

The opinion of the United States District Court for the Northern District of Ohio (App., *infra*, 18a-60a) is reported at 95 F. Supp. 2d 706. The opinion of the Sixth Circuit Court of Appeals (App., *infra*, 2a-17a), affirming in part and reversing in part, is reported at 290 F.3d 813. The Sixth Circuit order denying rehearing is unreported and is set forth in the Appendix. (App., *infra*, 70a-71a) The Sixth Court's amended order denying rehearing and rehearing *en banc* (App., *infra*, 61a-69a) is reported at 303 F.3d 752.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its opinion on May 22, 2002. (App., *infra*, 2a-17a) Petitioners filed a timely petition for rehearing, with suggestion for rehearing *en banc*, which was denied on August 22, 2002. (App., *infra*, 70a-71a) This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action arises principally under the First Amendment to the United States Constitution, which provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amend. I.

In addition, the Fourteenth Amendment to the United States Constitution provides that:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Ccnst. Amend. XIV.

The full text of the Charter of the City of Akron, Section 5, is set forth in the text, *infra*, and in the Appendix. (App., *infra*, 72a-75a)

STATEMENT OF THE CASE

This Court has repeatedly emphasized the nation's profound commitment to First Amendment principles. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S. Ct. 710, 721, 11 L. Ed. 686, 701 (1964). This commitment applies with special vigor to political speech, which is at the core of First Amendment protections. *See Boos v. Barry*, 485 U.S. 312, 318, 108 S. Ct. 1157, 1162, 99 L. Ed. 333, 343 (1988). The Sixth Circuit panel's majority decision below upholding extremely low limits on campaign contributions has created a split among the Circuit Courts of Appeal on this issue of vital First Amendment importance. *See, e.g., Carver v. Nixon*, 72 F.3d 633, 644 (8th Cir. 1995) (striking down $100 contribution limits in districts with fewer than 100,000 residents); *California Prolife Council PAC v. Scully*, 989 F. Supp. 1282, 1299 (E.D. Cal. 1998) (striking down $100 contribution limits in districts with fewer than 100,000 residents); *SEIU v. Fair Political Practices Comm.*, 955 F.2d 1312, 1321 (9th Cir. 1992) (striking California contribution limit of $1,000 per year for state and local candidates).

This action presents the Court with the opportunity to resolve the Circuit split and clearly define the acceptable First Amendment parameters of regulations governing the financing of political campaigns. Given the heightened focus on campaign finance reform by federal, state, and local governments alike, the Court's guidance is needed.[1]

Akron, Ohio is a city of approximately 217,000 residents according to U.S. Census figures for the year 2000.[2] It is in close proximity to Cleveland, Ohio, and is part of the much larger Cleveland metropolitan area and media market. Elected municipal officials in Akron include a mayor and three at-large Council Members elected to four-year terms, and ten ward Council Members elected to two-year terms.

During the general election of November 3, 1998, the voters of Akron approved a ballot initiative known as Issue 11, thereby enacting a Charter Amendment that became Section 5 of the Akron City Charter. The Charter Amendment imposed a regime of campaign finance regulations on candidates for Akron municipal office and their campaign donors.

On December 10, 1998, Plaintiffs brought an action in the United States District Court for the Northern District of

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1. The United States District Court for the Northern District of Ohio exercised jurisdiction over this matter by virtue of 28 U.S.C. §§ 1331 and 1343, as well as 28 U.S.C. §§ 2201 and 2202 relating to declaratory judgments. The District Court also had supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Upon a timely appeal and cross-appeal, 28 U.S.C. §§ 1291 and 1294 of the United States Code conferred jurisdiction on the Sixth Circuit Court of Appeals.

2. When the Amendment to the Akron City Charter was enacted, Akron had 233,000 residents according to the most recent census information available at the time.

Ohio seeking to enjoin enforcement of the Charter Amendment because it plainly violates the First and Fourteenth Amendments to the United States Constitution, as well as applicable provisions of the Ohio Constitution.

Among other things, the Charter Amendment imposes $100 and $300 limits on non-cash contributions, depending on the office sought. The Amendment further requires mandatory disclosure of all donors by name and home address, and mandatory disclosure of the employers of all donors contributing more than $50 to a candidate. When enacted, the Amendment also set a limit on the percentages of total contributions that could be accepted from persons who were not residents of the City of Akron, provided that contributions could be made only during a specifically defined fundraising season, required candidates to turn over campaign funds not actually spent during the election to either the City of Akron or to local charities, and made any violation of the Amendment's provisions punishable as a misdemeanor of the first degree.

The Charter Amendment reads as follows:[3]

Section 5. *CAMPAIGN FINANCE REFORM*

A. *PREAMBLE.* In order to demonstrate and promote ethics by government within the City of Akron: to further integrity in campaigns for public office: to prevent corruption and/or the appearance

3. As explained, *infra*, Subsections (B), (E), (F), and (I) were earlier found to be unconstitutional. No appeal was taken from that judgment and these sections are not part of the current Charter of the City of Akron. The section designations of Section 5 of the Charter thus do not precisely track the Charter Amendment. For clarity, and consistent with the briefing below, references will be to the Charter Amendment.

of corruption: and the restore and enhance the faith of the citizenry in government, we the people of this city do hereby establish this Amendment to the Charter of the City of Akron on Campaign Finance Reform.

B. *FUNDRAISING SEASON.* The fundraising season for the purpose of election or re-election to the office of Mayor or City Council shall commence on the 1st day of December prior to the General Election and end on the Thursday preceding the General Election. Campaign fundraising at other times is prohibited.

C. *LIMITS ON CASH CONTRIBUTIONS.* No candidate for Mayor or City Council shall accept, as a campaign contribution, more than $25 in cash (i.e. hard currency) from any person within any fundraising season. No person shall contribute cash in excess of said amount.

D. *LIMITS ON NON-CASH MONETARY AND IN-KIND CONTRIBUTIONS AND LOANS.* No candidate for Mayor or At-Large Council shall accept or solicit, as a non-cash monetary (i.e. checks, money orders, credit cards) or in-kind campaign contribution or loan, more than $300 from any person, campaign committee, political party, or political action committee. No candidate for a Council Ward position shall accept or solicit, as a non-cash monetary or in-kind campaign contribution or loan, more than $100 from any person, campaign committee, political party, or political action committee. No person, political action committee, political party or political

campaign shall contribute funds or in-kind contributions in excess of said amounts. Contributions from the candidate and labor of volunteers are exempt from these provisions.

E. *LIMITS ON NONRESIDENT CONTRIBUTION*. No candidate for Mayor or At-Large Council shall accept more than 25% of the total aggregate contribution accumulated during the fundraising season from natural persons whom reside outside the City of Akron.

F. *SURPLUS CAMPAIGN FUNDS DEPOSIT*. Within sixty (60) days following a General Election a candidate for municipal office shall turn over any balance of campaign funds over expenses incurred at the time of and within 30 days after the election either to the General Fund for the City of Akron for the benefit of the citizenry or to one or more local charities recognized by the U.S. Internal Revenue Service as a 501(c)(3) organization.

G. *DISCLOSURE*.

(1) *Home Address*: All persons who make any financial contribution or loan to any campaign for municipal office shall be listed by home address on the candidate's Financial Report filed with the Summit County Board of Elections.

(2) *Employer Identification*: The candidate for any municipal office shall identify all persons who contribute $50 or more by primary employer. If this information is not on file with the Summit County Board of Elections, the contribution shall be returned to the contributor within thirty (30) days after the filing of the candidate's Financial Report.

(3) *Friday Report*: All candidates for Mayor or City Council shall submit a Campaign Finance Report to the Clerk of City Council by noon on Friday prior to the Primary Election and General Election. This report shall identify all campaign contributions and expenditures made as of said Friday and this report shall be available for public viewing by the Clerk of City Council at the Akron Municipal Building within an hour after the filing deadline.

H. *SEVERABILITY*. If any provision of the amendment, or the application of a provision to any person or circumstance, is held to be invalid, the remainder of this amendment, and the application of the provisions to any person or circumstance, shall not be affected by the holding.

I. *PENALTIES*. Any violation of this Amendment is an offense to be reported to the Akron Police Department and is punishable as a misdemeanor of the first degree according to provisions specified in §136.20 (Official Misconduct), Subsection (E), and §136.21 (Soliciting or Receiving Improper Compensation), Subsections (D) and (E) of the Code of Ordinances of the City of Akron.

J. *ENABLING LEGISLATION*. City Council shall forthwith enact provisions necessary to enforce these Charter sections.

Plaintiffs include a current and a now-former member of the Akron City Council as well as several politically active citizens who routinely donate to local campaigns. Plaintiffs challenged all substantive provisions of the Charter

Amendment with the exception of Subsection (G)(3).[4] In their December 10, 1998 Complaint, Plaintiffs sought to have the Charter Amendment (except for (G)(3)) enjoined and declared unconstitutional. From the outset of the litigation, Defendant, City of Akron, has concurred with Plaintiffs that nearly all of the Charter Amendment is unconstitutional.

On December 15, 1998, by Stipulation and Order, the United States District Court for the Northern District of Ohio preliminarily enjoined the enforcement of Section(B), establishing a "fundraising season;" Section(C), setting cash contribution limits; Section(D), limiting overall contributions; Section(E), limiting non-resident contributions; Section(F), requiring surplus campaign funds to be turned over to the City of Akron or a local charity; Section(G)(1), requiring disclosure of a donor's home address; Section(G)(2); requiring disclosure of a donor's employer when making donations; and Section(I), the penalty provisions of the Amendment.

The day after the District Court entered its order enjoining enforcement, Respondents, Bruce Kilby, Mike Parsons, and Patricia Longville filed a Motion to Intervene. On December 22, 1998, the "Yes on Issue 11 Campaign" and Gregory D. Coleridge sought to intervene as well. The District Court granted both motions on January 11, 1999.

After briefing from all parties, the District Court entered partial judgment on the pleadings on June 9, 1999, finding the fundraising season, non-resident contribution limits, surplus campaign fund disbursement, and penalty provisions unconstitutional, enjoining their enforcement, and declaring them null and void. Judgment was certified as final and no appeal was taken.

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4. Subsection (G)(3) requires certain candidates to submit a Campaign Finance Report on the Friday immediately prior to an election.

On December 2, 1999, the District Court entered summary judgment with respect to the cash contribution limits, overall contribution limits, and home address disclosure requirements, declaring them unconstitutional and enjoining their enforcement. The Court held that, under *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976), campaign contributions are a form of political expression and any limitations on such expression are subject to the closest scrutiny. *Frank v. City of Akron*, 95 F. Supp. 2d 706, 711 (N.D. Ohio 1999). (App., *infra*, 28a-29a)

Most importantly, the District Court struck down the overall contribution limits of $300 per four year election cycle and $100 per two year election cycle imposed by Subsection 5(D) as being unconstitutionally low. *Id.* at 39a-41a. In formulating its decision, the District Court relied on the precedents established in *Buckley v. Valeo* and specifically noted this Court's holding that:

> [C]ontribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy.

Frank v. City of Akron, 95 F. Supp. 2d at 711 (citing *Buckley v. Valeo*, 424 U.S. at 21). (App., *infra*, 27a)

After critically assessing the Respondents' contention that contribution limits "three to ten times less than that those upheld in *Buckley* should . . . pass constitutional muster," citing to the Eighth Circuit's opinions in *Day v. Hollahan*, 34 F.3d 1356 (8th Cir. 1994) and *Carver v. Nixon*, 72 F.3d 633 (8th Cir. 1995) striking down substantially similar limits,

and reviewing case law from other jurisdictions, the District Court concluded:

> This Court has not found a case in which a federal court has sustained limits this low for a city as large as Akron, and numerous courts have struck down similar limitations.

Frank v. City of Akron, 95 F. Supp. 2d at 711, 716 (citations omitted). (App., *infra*, 27a-30a, 40a)

Accordingly, the District Court ruled that the Charter Amendments' overall contribution limits of $300 per four year election cycle and $100 per two year elections cycle "cannot survive constitutional challenge when measured against *Buckley* and its progeny" and declared the limits unconstitutional. *Id.* at 42a. Employing strict scrutiny, the Court likewise found the $25 cash contribution limit imposed by Section (C) of the Charter Amendment unconstitutional. *Id.* at 43a.

The Court also found the *public* disclosure of contributors' home addresses to be constitutionally defective. *Id.* at 44a-47a. The Court concluded that many citizens would be faced with a choice between "compromising their safety" and exercising their First Amendment rights. *Id.* at 46a. Because some citizens might be forced to sacrifice their First Amendment rights for security reasons, the Court struck down this provision due to its "materially chilling" effect on First Amendment expression. *Id.* at 45a. Finally, the District Court entered summary judgment on the employer identification provision, finding it constitutional. *Id.* at 47a-50a. Appeals and cross-appeals were timely taken from the judgment.

On May 22, 2002, a panel of the Sixth Circuit Court of Appeals filed its decision affirming in part and reversing in

part. *Frank v. City of Akron*, 290 F.3d 813 (6th Cir. 2002). (App., *infra*, 2a-17a) The panel affirmed summary judgment with respect to the employer identification provision and reversed with respect to the cash contribution limit. *Id.* at 11a. Over a partial dissent, the panel also reversed summary judgment with respect to the overall contribution limits, and home address disclosure requirements. *Id.* at 11a.

In its treatment of the contribution limits of $300 and $100, the majority noted the Constitution's lack of "explicit provisions" concerning campaign finance. *Id.* at 5a-6a. The majority then found that the contribution limitations could serve the significant objective of limiting undue political influence and were not shown to unduly infringe voters' rights of association. *Id.* at 8a-9a. Here, too, the majority did not analyze the contrary decisions of the Eighth Circuit and other federal courts. Instead, as the dissent notes, the majority engaged in "general philosophizing" while declining to apply the relevant constitutional analysis. *Frank v. City of Akron*, 290 F.3d 820-21 (Gilman, J., dissenting in part). (App., *infra*, 14a) Judge Gilman further observed that the District Court did what the majority failed to do, which was carefully conduct a constitutional analysis of *Buckley* and its progeny, including Eighth Circuit opinions directly on point, and determine that the overall contribution limits were unconstitutional. *Id.* at 14a-15a. Based upon the District Court's detailed analysis, Judge Gilman also concurred that the $300 and $100 contribution limits were unconstitutionally low. *Id.* at 15a.

Finally, the panel majority reversed summary judgment as to the public disclosure of contributors' home addresses. *Frank v. City of Akron*, 290 F.3d at 819. (App., *infra*, 10a-11a) Judge Gilman, however, agreed with the District Court and found this provision "unnecessarily invasive" and in

contravention of this Court's precedents regarding "compelled disclosure." *Frank v. City of Akron*, 290 F.3d at 821-22 (Gilman, J., dissenting in part). (App., *infra*, 16a-17a) This opinion was subsequently joined by the Sixth Circuit's Judge Boggs in his dissent to the denial of *en banc* review. *Frank v. City of Akron*, 303 F.3d 752, 752-54 (6th Cir. 2002) (Boggs, J., dissenting from denial of rehearing *en banc*). (App., *infra*, 63a-67a)

On August 22, 2002, the panel denied a timely petition for rehearing and suggestion of rehearing *en banc*. *Frank v. City of Akron*, No. 00-3050/00-3070 (6th Cir., August 22, 2002) (order denying *en banc* review). (App., *infra*, 70a-71a) On September 9, 2002, in an amended order, Judge Boggs filed a stinging dissent from the denial of rehearing *en banc*. The dissent explained that the panel's "very short *ipse dixit*" opinion was "considerably too cavalier" in "upholding government intrusion" on First Amendment values. *Frank v. City of Akron*, 303 F.3d 752 (6th Cir. 2002) (Boggs, J., dissenting). (App., *infra*, 63a-67a)

Judge Boggs was alarmed by the majority's "blithe" approval of Charter Amendment regulations requiring "compelled disclosure" and "coerced revelation" of citizens' political activities. *Id.* at 63a-66a. He further noted the chilling effect that would result from "state-assisted political coercion." *Id.* at 65a-66a.

Judge Boggs's dissent similarly criticized the majority's failure to set aside a contribution limit "smaller . . . than has ever been upheld in any other litigation." *Id.* at 66a. It observed that the majority, in reversing summary judgment against Akron's "radically low limits," failed to impose any limiting principles. *Id.* at 66a-67a. As a result, jurisdictions within the Sixth Circuit could consider themselves essentially free to impose campaign contribution limits down to zero. *Id.* at 67a.

REASONS FOR GRANTING THE PETITION

I. The Sixth Circuit Opinion Constituted A Radical Departure from Prior Decisions, Creating a Split Amongst the Circuits Regarding How Low Contribution Limitations May Be Set That Must be Resolved.

This case puts squarely before this Court the question of what degree of restriction may be placed upon contribution limits. This Court has already established in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976), and *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 120 S. Ct. 897, 145 L. Ed. 2d 886 (2000), that reasonable restrictions upon political contribution amounts may be imposed. But this Court has at the same time emphasized that excessively low contribution limits are unconstitutional.

Despite this Court's guidance on this issue, the Sixth Circuit's decision leaving Akron's $300 and $100 limits for elections intact is a radical departure from established precedent and this Court's holdings and must be reversed. The Sixth Circuit has ignored this Court's instructions that there is a point below which contribution limits cannot be set without destroying freedom of speech and association in political campaigns. The District Court understood and applied that principle correctly. It is now up to this Court to reverse the Sixth Circuit's aberrational departure and restore those principles to law.

This Court's decisions in *Buckley* and *Shrink Missouri* establish that contribution limits should only be upheld if: (1) they narrowly focus on the state's interests; (2) allow contributors to freely associate with any candidate; and, (3) allow candidates to collect enough funds to wage an effective campaign. In evaluating the Akron limits, the

District Court ruled limits of $300 and $100 were "simply too low to allow for appropriately robust participation in protected political speech and association." *Frank v. City of Akron*, 95 F. Supp. 2d 706, 716 (N.D. Ohio 1999). (App., *infra*, 41a) This analysis, supported by Judge Gilman and Judge Boggs in their subsequent dissents, clearly and correctly recognizes that the $300 and $100 limits do not allow individuals to wage effective campaigns.

The Eighth Circuit has struck down identical limits in areas with smaller populations than Akron. *See Russell v. Burriss*, 146 F.3d 563, 571 (8th Cir. 1998) (striking down limits of $300/$100 per election for statewide and legislative office); *Carver v. Nixon*, 72 F.3d 633 (8th Cir. 1995), *cert. denied*, 518 U.S. 1033 (striking down limits of $300/$100 per election cycle for statewide and legislative office). In *Carver*, the Eighth Circuit, relying on *Buckley*, ruled that Missouri's $300 and $100 limits were "too low to allow meaningful participation in protected political speech and association" and were "not narrowly tailored to serve the state's legitimate interest in protecting the integrity of the political system." *Carver v. Nixon*, 72 F.3d at 641 (citing *Day v. Holahan*, 34 F.3d 1356, 1366 (8th Cir. 1994), *cert. denied*, 513 U.S. 1127, 130 L. Ed. 2d 881, 115 S. Ct. 936 (1995). In support of its finding, the *Carver* court specifically noted that the $300 and $100 limitations were dramatically lower than the $2000 per election cycle which this Court upheld in *Buckley*. *Id.*

Subsequently, in *Russell v. Burriss*, the Eighth Circuit considered an Arkansas statute which established a $300 contribution limit for certain statewide positions; while establishing a $100 limit for all other elections. *Russell v. Burriss*, 146 F.3d at 570. Although the trial court in that case only found the provision unconstitutional as to certain

positions, the Eighth Circuit, relying on its decision in *Carver*, ruled that such limitations were too low for all elected positions to allow meaningful participation in protected speech and association. *Id.* (citing *Carver v. Nixon*, 72 F.3d at 641).

Clearly, if these limitations were considered to be too low to allow "meaningful participation" in areas with less than 200,000 and 100,000 residents, such limitations are unconstitutionally — even ridiculously — low for an area, such as Akron, Ohio which has over 200,000 residents and whose candidates must purchase media time in the more expensive Cleveland, Ohio market. The split that has arisen between the Eighth and Sixth Circuit's treatments of identical issues requires that this Court resolve the issue and determine the degree to which contribution limits may be enacted.

Contribution limits are unconstitutional when they are "so radical in effect as to render political association ineffective, drive the sound of the candidate's voice below the level of notice, and render contributions pointless." *Shrink Missouri*, 528 U.S. 396. Although the District Court issued its ruling without the benefit of the *Shrink Missouri* decision, it joined the majority of courts that found contribution limits of $300 and $100 were unconstitutionally low under the same or substantially similar conditions. *See Russell v. Burris*, 146 F.3d at 571 (8th Cir. 1998) (striking down limits of $300/$100 per election for statewide and legislative office); *Carver v. Nixon*, 72 F.3d 633 (8th Cir. 1995), *cert. denied*, 518 U.S. 1033 (striking down limits of $300/$100 per election cycle for statewide and legislative office); *California ProLife Council Political Action Comm.*, 989 F. Supp. at 1297 (E.D. Cal. 1998) (striking down $100 per election limit for local offices in jurisdictions under 100,000 residents); *National Black Police Ass'n. v. Dist. of Columbia Bd. of Elections*

and Ethics, 924 F. Supp. 270, 281 (D.D.C. 1996), *vacated as moot*, 108 F.3d 346 (D.C. Cir. 1997) (striking down $100 per election cycle limit for district-wide office); *but see*, *Montana Right to Life Assoc. v. Eddleman*, 306 F.3d 874 (9th Cir. 2002) (upholding Montana limitations of $400 for governor and lieutenant governor positions, $200 limits for other state office; and $100 for other candidates because the State was able to present sufficient evidence of its asserted interest in avoiding corruption and that the statute was "closely drawn" to avoid abridgement of the freedom of association); *Landell v. Sorrell*, 118 F. Supp. 459 (D. Vt. 2000) (upholding as to individuals limits of $400 per two year cycle for state wide candidates, $300 per three year cycle for state senate races, and $200 per two year cycles for state representative candidates).[5] In holding that the $300 and $100 limits were unconstitutional, the District Court prophetically adhered in substance to the *Shrink Missouri* "radical effect" test and ensured that Akron candidates were not prevented from having their voices heard.

In *Shrink Missouri*, this Court overturned the Eighth Circuit decision finding that Missouri's $1,075 contribution limit was unconstitutional. *Shrink Missouri*, 528 U.S. at 395. However, in so doing, this Court specifically noted the District Court's finding that such a limit would not prevent candidates in Missouri from running effective campaigns. *Id.* In this case, the District Court, sitting in Akron, Ohio ruled that:

> Unfortunately, in this day and age, $100 is a relatively insignificant amount of money. How can

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5. In *Landell v. Vermont Public Interest Research Group*, 300 F.3d 129 (2d Cir. 2002), the Second Circuit affirmed the constitutionality of the contribution limitations, however, on October 3, 2002, the Second Circuit withdrew its opinion, pending further proceedings before and amendment by the panel.

> you tell a person he or she can't spend more supporting a candidate for City Council than it costs to take a family of four to a major league baseball game? This Court is of the belief that the $100 and $300 limits will significantly impair the ability of individuals in Akron to exercise their political rights. These limits are simply too low to allow for appropriately robust participation in protected political speech and association.

Frank v. City of Akron, 95 F. Supp. 2d at 716. (App., *infra*, 41a)

Despite this cogent analysis, the Sixth Circuit majority chose to stake out a radical position in failing to strike down the contribution limits, affirming limits three to ten times lower than those previously approved by the Court in *Buckley* and *Shrink Missouri.*

As Judge Gilman stated in his dissent to the majority opinion in *Frank v. City of Akron*, the majority deemed the Akron limitations constitutional without addressing any of the relevant precedents, including *Carver* and *Russell* which were directly on point. *Frank v. City of Akron*, 290 F.3d at 820. (App., *infra*, 14a) In Judge Gilman's words:

> One serious problem with the majority's broad generalizations is that they give no indication of any limiting principle. Under the majority's rationale, there apparently would be no constitutionally significant difference between a law imposing a $1000 contribution limit and one imposing a $1 contribution limit. Surely that is not what the Supreme Court meant to imply when it stated that "the dollar amount of the limit need not be 'fine tun[ed].' "

Id. (citing *Shrink Missouri*, 528 U.S. at 388).

Judge Gilman's dissent crystallizes why the Sixth Circuit's majority opinion must be reviewed by this Court. Rather than analyze the constitutionality of the Akron Charter provision to determine the correctness of the District Court's overturning of the contribution limitations, the majority summarily concluded that the limits could not be found unconstitutional on the record before it without identifying any limiting principles.[6] *Frank v. City of Akron*, 290 F.3d at 820. (App., *infra*, 14a-15a)

Even without the benefit of *Shrink Missouri*, the District Court did not rule in a vacuum. Rather, the District Court's decision correctly reflected the jurisprudence at the time of its decision. Its decision has only been bolstered by the *Shrink Missouri* opinion. Based upon this Court's decisions and post-*Buckley* and *Shrink Missouri* case law developed by other circuits, Akron's $300 per four year election cycle and $100 per two year election cycle limits are far below established constitutional boundaries. While the Supreme Court did not establish a fixed dollar threshold below which contribution limits could not go in any instance, *Shrink Missouri* set a

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6. Indeed, the majority went far beyond the record to make the unfounded statements that various forms of media "are relatively inexpensive in a town the size of Akron" and that "local elections such as the ones at issue here rarely rely on the mass media campaigns seen on the national level." *Id.* at 818. If a record on these matters were developed, it would show that Akron is actually in the expensive Cleveland, Ohio media market, lacking any local commercial television station of its own, and that a mayor's race in this city of a quarter-million people can easily require the resources of a congressional race. The point, however, is that the Sixth Circuit was willing to reach beyond the record to draw its own erroneous "factual" conclusions and to substitute philosophy for analysis of precedent in order to come to a result seeming more to reflect political views than constitutional analysis.

standard for the analysis of such limits, employing the "radical effect" test:

> In *Buckley*, we specifically rejected the contention that $1,000, or any other amount, was a constitutional minimum below which legislatures could not regulate. As indicated above, we referred instead to the outer limits of contribution regulation by asking whether there was any showing that the limits were so low as to impede the ability of candidates to "amass the resources necessary for effective advocacy," 424 U.S. at 21. We asked, in other words, whether the contribution limitation was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless.

Shrink Missouri, 528 U.S. at 397.

In other words, if a candidate must somehow find a vast number of willing small contributors, because of the limits, the effort becomes all-consuming and ultimately futile. As indicated by the District Court's analysis, it is beyond fair debate that that will happen in Akron under the regime of these limits.

This Court's decision in *Shrink Missouri* supplemented — and explicitly did not supplant — the other teachings of *Buckley* — that contribution limitations must not have "any dramatic adverse effect on the funding of campaigns and political associations," *Buckley v. Valeo*, 424 U.S. at 21, nor "undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates and political parties." *Id.* at 29.

In this case, in accordance with *Buckley* and the cases that followed, the District Court determined that there was no "genuine issue of material fact" and that summary judgment as a matter of law was appropriate because the $300 and $100 limits were unconstitutionally low. Like *Shrink Missouri*, "this case does not present a close call" concerning the evidence. *Shrink Missouri*, 528 U.S. at 393. Clearly, the Sixth Circuit opinion in *Frank v. City of Akron*, is vastly out of touch with the majority of courts considering this issue, ignores the teaching of this Court, and is directly at odds with the decisions of the Eighth Circuit, which addressed identical limitations in smaller areas.

The Sixth Circuit majority, without any extended analysis of this Court's opinions in *Buckley* and *Shrink Missouri*, took it upon itself to rewrite this Court's "radical effect" test. As noted by both Judges Gilman and Boggs, the majority's failure to recognize and identify *any* limiting principles was tantamount to establish the precedent in the Sixth Circuit that *no* limiting principle exists. *Frank v. City of Akron*, 290 F. 3d at 821 (Gillman, J., dissenting in part) (App., *infra*, 14a); *Frank v. City of Akron*, 303 F. 3d at 754 (Boggs, J., dissenting) (App., *infra*, 66a-67a) Allowing the Sixth Circuit opinion to stand risks future contribution limits of as low as $1, or conceivably less, a prospect recognized by both of the dissenting Judges. The real dilemma created by the Sixth Circuit is that in allowing *contribution* limits to be set at such low levels, it is effectively endorsing *expenditure* limits, for at some point, the difficulty in raising money with such low limits in place will necessarily result in the inability to spend money, thereby preventing candidates from reaching their constituency and undermining "the potential for robust and effective discussion of candidates and campaign issues." *Buckley v. Valeo*, 424 U.S. at 29.

While this Court has found that contribution limits require "less compelling justification," as this Court recently detailed in *FEC v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 121 S. Ct. 2351, 150 L. Ed. 2d 461 (2001) (holding that coordinated expenditures between a political party and a candidate may be constitutionally limited to prevent circumvention of contribution limits), it has rarely, if ever, upheld expenditure limitations:

> Spending for political ends and contributing to political candidates both fall within the First Amendment's protection of speech and political association. *Buckley*, 424 U.S. at 14-23. But ever since we first reviewed the 1971 Act, we have understood that limits on political expenditures deserve closer scrutiny than restrictions on political contributions. *Ibid*; see also, e.g., *Shrink Missouri*, 528 U.S. at 386-388; *Colorado I, supra*, at 610, 614-615; *Massachusetts Citizens for Life*, 479 U.S. at 259-260. Restraints on expenditures generally curb more expressive and associational activity than limits on contributions do. *Shrink Missouri, supra*, at 386-388; *Colorado I, supra*, at 615; *Buckley*, 424 U.S. at 19-23.
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> * * *
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> *Given these differences, we have routinely struck down limitations on independent expenditures by candidates, other individuals, and groups, see Federal Election Comm'n v. National Conservative Political Action Comm.*, 470 U.S. 480, 490-501, 84 L. Ed. 2d 455, 105 S. Ct. 1459 (1985) (political action committees); *Buckley*, supra, at 39-58 (individuals, groups, candidates,

> and campaigns), while repeatedly upholding contribution limits, *see Shrink Missouri, supra* (contributions by political action committees); *California Medical Assn. v. Federal Election Comm'n*, 453 U.S. 182, 193-199, 69 L. Ed. 2d 567, 101 S. Ct. 2712 (1981) (contributions by individuals and associations); *Buckley, supra*, at 23-36 (contributions by individuals, groups, and political committees).

Colorado Republican Fed. Campaign Comm., 533 U.S. at 440-41 (italics in original).

What the Sixth Circuit has done in upholding the unprecedented low contribution limits is effectively establish expenditure limits; limits that this Court has routinely struck down because they "curb more expressive and associational activity than limits on contributions do." *Id.* Thus, the Sixth Circuit has unconstitutionally limited Akron citizen's rights to expression and association in two ways, first by imposing contribution limits which are so low that in effect "render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless"; and, second, because too little money can be amassed, by limiting the expenditures and curbing a candidate's "expressive and associational activity." *Shrink Missouri*, 528 U.S. at 397; *Colorado Republican Fed. Campaign Comm.*, 533 U.S. at 440. Because of both of these unconstitutional results, the Sixth Circuit opinion should be struck down by this Court.

Despite this Court's rulings in *Buckley* and *Shrink Missouri*, the Sixth Circuit majority, relying on "grandiose statements and general philosophizing" failed to utilize this Court's analytical framework. *Frank v. City of Akron*,

290 F.3d at 820 (Gillman, J., dissenting). (App., *infra*, 14a). In so doing, the Sixth Circuit has upheld contribution limits that serve to deprive candidates of the ability to campaign effectively and get their message to the voting public, the very things that this Court proscribed in *Buckley* and *Shrink Missouri*. If these provisions are upheld, candidates in Akron will not be able to raise the necessary funds to allow them to effectively wage a campaign and they will be deprived of their political voice. This issue is far too important to be dealt with in such a cursory and cavalier fashion, and this Court must reverse the Sixth Circuit holding and establish that limits which are ridiculously low, as the Akron limits are, and operate as *de facto* expenditure limits, as the limits do, will not pass constitutional muster.

II. This Court's Decisions in *Buckley* and *Shrink Missouri* Must be Reevaluated to Determine the Limits of the Legislature's Ability to Limit Political Contributions, Especially in Light of this Court's Pending Consideration of *FEC v. Beaumont* and its Future Consideration of the Bipartisan Campaign Reform Act of 2002.

As previously stated, this Court's decisions in *Buckley* and *Shrink Missouri* together establish that contribution limits can only be upheld if they narrowly focus on the state's interests, allow contributors to freely associate with any candidate, and allow candidates to collect enough funds to wage an effective campaign. Although the holding of *Frank v. City of Akron* on its own requires this Court's immediate consideration, it is especially ripe for review now because of its recent granting of *certiorari* in *FEC v. Beaumont* and its likely future review of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), both of which have equally important implications for campaign finance reform jurisprudence in this country.

In *FEC v. Beaumont*, this Court will review whether the prohibitions upon direct campaign contributions by corporations and labor unions established by the Federal Election Campaign Act of 1971 can constitutionally be applied to non-profit corporations engaged in political advocacy. *FEC v. Beaumont*, No. 02-403, *cert. granted*, 2002 U.S. LEXIS 8465 (U.S. Nov. 18, 2002). In asking this Court to resolve the split between the Fourth Circuit's striking down such federal prohibitions as to non-profit advocacy corporations on First Amendment grounds in *Beaumont v. FEC*, 278 F. 3d 261 (4th Cir. 2002), and the Sixth Circuit's upholding such prohibitions for state campaigns in *Kentucky Right to Life v. Terry*, 108 F. 3d 637 (6th Cir. 1997), the Petitioner in *FEC v. Beaumont* urged this Court:

> That there is a clear need for uniform campaign financing rules governing federal elections across the country.

Petition for *Writ* of *Certiorari* at 15, *FEC v. Beaumont*, No. 02-403 (filed Sept. 13, 2002) *cert. granted*, *FEC v. Beaumont*, No. 02-403, 2002 U.S. LEXIS 8465 (U.S. Nov. 18, 2002).

That statement is equally true for the issues involved in *Frank v. City of Akron*. As this Court will review the constitutionality of prohibitions and, by necessary implication, limitations upon direct contributions by non-profit advocacy corporations to ensure uniformity in one aspect of the campaign finance laws; it should grant the present petition to ensure similar uniformity in determining the constitutionality of contributions limits in this case. Uniformity in this area is especially crucial when the contributions limits are so low that they operate as *de facto* expenditure limitations, limits which are strictly proscribed by this Court.

Similarly, through the BCRA, which came into effect almost twenty-seven years to the day after *Buckley* was first argued, this Court will once again face a national election reform act with far-reaching implications for political contributions and expenditures.[7] This Court's disposition of the BCRA lawsuits will have far-reaching implications upon the constitutionality of specific campaign expenditures and regulations upon "soft money" contributions to state and local elections.

The BCRA regulation of "soft money", contributions from political parties to candidates and/or the direct funding of "issue advocacy", affects the same pool of resources as the "hard money" donations directly from individuals. Taken together, as they rightly should be, these pools of resources determine whether candidates can "[amass] the funds necessary for effective advocacy" or are so limited by the funds they collect "to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and to render contributions pointless." *Buckley v. Valeo*, 424 U.S. at 21; *Shrink Missouri*, 528 U.S. at 397. The interrelation of "soft money" and "hard money", and the resulting peril of constitutional regulation, has already been noted by members of this Court. Justice Kennedy in his dissent to the Court's majority opinion in *Shrink Missouri*, specifically noted:

> [Respondent] asks us to evaluate his speech claim in the context of a system which favors candidates and officeholders whose campaigns are supported

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7. The BCRA is currently before the United States District Court for the District of Columbia where a three judge panel shall evaluate the specific attacks brought forth in no less than ten lawsuits. *See McConnell v. FEC*, No. 02-582 (D.D.C. 2002) and consolidated cases.

> by soft money, usually funneled through political parties. The Court pays him no heed.
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> * * *
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> Soft money may be contributed to political parties in unlimited amounts, and is often used to fund so-called issue advocacy, advertisements that promote or attack a candidate's position without specifically urging his or her election or defeat. Issue advocacy, like soft money, is unrestricted, while straightforward speech in the form of financial contributions paid to a candidate, speech subject to full disclosure and prompt evaluation by the public, is not. Thus has the Court's decision given us covert speech. This mocks the First Amendment.

Shrink Missouri, 528 U.S. at 406 (Kennedy, J., dissenting).

As Justice Kennedy's dissent observes, the issues of "soft money" and "hard money", expenditures and contributions, and, restricted and unrestricted speech, are inextricably intertwined. This is especially true in this case, where the Akron $300 and $100 limits are so low they operate as *de facto* expenditure limitations.

This Court's consideration of Petitioners' case, perhaps in conjunction with its pending consideration of *FEC v. Beaumont* and/or its certain consideration of the BCRA, will afford it the opportunity to address the entire spectrum of campaign finance reform, an opportunity it was not afforded in either *Buckley* or *Shrink Missouri*. Such consideration would allow for the establishment of clear guidelines for the conduct of elections and the mechanism for contributions and expenditures at both the federal and state level.

III. The Sixth Circuit Erred in Ruling that the Home Address Disclosure Provisions of the Akron Charter Amendments were Constitutional.

While the core of *Frank v. City of Akron* concerns contribution limits, the Sixth Circuit's determination that the home address disclosure provision is constitutional is also clearly wrong. Demonstrating the same thoroughness as it did in reviewing the overall contribution limits, the District Court properly found that the home address disclosure requirement of Section 5(G)(1) of the Charter Amendments was not narrowly tailored to satisfy any public purpose which would justify infringing on a person's fundamental right to privacy and First Amendment right to participate in the political process without sacrificing legitimate individual interest. This is particularly true in light of Ohio and federal law that already requires address disclosure. Ohio Rev. Code Ann. §§ 3517.10(B)(4)(b)(1), (F)(1) (West 2000); 2 U.S.C. § 431(13)(A) (2000); 11 C.F.R. § 100.12 (2000) (allowing a contributor the option of disclosing a business or residential address in connection with certain contributions, or otherwise requiring designation of a "mailing address").

The burden on a contributor to list a home address does not serve any purpose other than to invade a contributor's personal and private life. *See, e.g., Buckley v. Valeo*, 424 U.S. at 66; *Bloch v. Ribar*, 156 F.3d 673, 683 (6th Cir. 1998). As the District Court correctly ruled, there is no "relevant correlation" or "substantial relation" between the government's interest in obtaining a donor's home address and the professed goal of avoiding the appearance of corruption. *Buckley v. Valeo*, 424 U.S. at 64; *Frank v. City of Akron*, 95 F. Supp. 2d at 718 (App., *infra*, 46a-47a) The District Court's conclusion was echoed in Judge Gilman's dissent to the majority opinion when he also found that no

relevant correlation existed between a government interest and the information required to be disclosed. *Frank v. City of Akron*, 290 F.3d at 822 (Gillman, J., dissenting). (App., *infra*, 17a)

In an age where public and private security is such an important issue, should citizens in Akron, Ohio be compelled to disclose personal residential information simply because they are exercising their rights to freedom of speech and freedom of association? In answering this question with a resounding "no", Judge Boggs in his dissent to denial of *en banc* review, correctly observed:

> Ever since cases such as *Bates v. City of Little Rock*, 361 U.S. 516 (1960), it has been clear that coerced revelation of one's political activity and associations can be a means of assisting coercion and repression of those views, and must be judged under First Amendment standards.
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> * * *
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> In light of the constitutional protection that the Supreme Court has given to even completely anonymous political speech (*see McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995)), the court should have been more concerned about the First Amendment values impinged upon by this type of compelled disclosure. Just as in *Bates*, where the forced revelation of political association with the NAACP made it easier for persons to bring economic or physical pressure to bear on disfavored groups, the forced revelation of home addresses can be extremely chilling to people who may wish to contribute to candidates that may be

> broadly unpopular, or simply unpopular with particular powerful interests.

Frank v. City of Akron, 303 F.3d at 753 (Boggs, J., dissenting). (App., *infra*, 63a-64a)

At such low contribution amounts, no public purpose is served by requiring the home address disclosure. The invasion may very well squelch a contributor's desire to contribute to a particular campaign or cause. Accordingly, the Sixth Circuit opinion should be reviewed because an in-depth legal analysis, the sort of which was not conducted by the Sixth Circuit majority, will clearly demonstrate that the home address disclosure requirement of Section 5(G)(1) is unconstitutional as a matter of law.

CONCLUSION

This case provides this Court with the well-defined opportunity to set an outer bound regarding the constitutionality of election contribution limitations. In light of the fact that the Eighth and Sixth Circuits have reached polar opposite conclusions as to the virtually same set of facts, this Court should step in and provide the necessary guidance for the various federal, state, and local governments who will undoubtedly institute campaign finance reform measures in the coming year.

For all of these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DATED AND FILED MAY 22, 2002

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 00-3050/3070

JOHN V. FRANK; MARCO SOMMERVILLE; JOHN W. VALLE; ROBERT G. KONSTAND; GERALD HOLLAND; NANCY HESLOP; CHARLES WALKER,

Plaintiffs-Appellees/ Cross-Appellants,

v.

CITY OF AKRON,

Defendant-Appellee,

BRUCE KILBY; MIKE PARSONS; PATRICIA LONGVILLE; GREGORY D. COLERIDGE; THE YES ON 11 CAMPAIGN,

Intervenors-Appellants/ Cross-Appellees.

Appeal from the United States District Court
for the Northern District of Ohio at Akron.
No. 98-02862—Dan A. Polster, District Judge.

Argued: November 29, 2001

Appendix A

Decided and Filed: May 22, 2002

Before: MERRITT, CLAY, and GILMAN, Circuit Judges.

OPINION

MERRITT, Circuit Judge. This case concerns the constitutionality of a campaign finance reform amendment to the City of Akron, Ohio, charter passed by Akron voters in a city-wide referendum. Plaintiffs are a group of city council members and voters who challenge the charter amendment on First Amendment grounds. The district court held that three of the four campaign contribution limitations and regulations were unconstitutional. We believe they are all valid.

I. Facts

The City of Akron is a home-rule municipal corporation governing approximately 217,000 citizens. The municipal government is composed of an elected Mayor, three elected at-large council members and ten elected ward council members. The Mayor and the at-large council members serve four year terms, and the ward council members serve two-year terms.

In the fall of 1998, intervening defendants Greg Coleridge, Mike Parsons, Patty Longville, Bruce Kilby, and the Yes on 11 Campaign started a grass roots effort to amend the City of Akron charter to place limitations on the financing of municipal elections. On November 3, 1998, the initiative known as "Issue 11" was placed on the election ballot and

passed with 68% of the vote. These reforms were designed to stop businessmen and other donors from using campaign contributions to buy city contracts — a practice said to be demonstrated by a study correlating campaign contributions to the contract awards of the city council — and other forms of influence over the council's decisions.

In December, 1998, plaintiffs, who include one former council member, two current council members, and three active political contributors, filed suit to challenge the charter amendment on First Amendment and other grounds. Before us on appeal are four specific provisions: non-cash campaign contribution limits of $100 for ward council members and $300 for at-large council members and the Mayor, a *cash* campaign contribution limit of $25, a home address public disclosure requirement for all contributors, and an employer identification requirement for contributors who give $50 or more. The district court granted summary judgment in favor of the plaintiffs on the first three provisions, holding that they violated the plaintiffs' First Amendment right to association, but denied summary judgment on the employer identification requirement.

The intervenors appealed the district court's grant of summary judgment, and plaintiffs cross-appealed the district court's denial of summary judgment as to the employer identification requirement. The City of Akron, formerly the defendants, joined the plaintiffs on appeal and filed a brief in support of their position.

Appendix A

II. Standing

Before addressing the merits of the plaintiffs' claims, we must first address the preliminary issue of standing. The intervenors claim that the plaintiffs have failed to show an injury in fact, or a personal stake in the case. As the district court correctly noted, however, where "plaintiffs allege an intention to engage in a course of conduct arguably affected by the statute, courts have found standing to challenge the statute even absent a specific threat of enforcement." *United Food & Commercial Workers International Union v. IBP, Inc.*, 857 F.2d 422, 428 (8th Cir. 1988). Here, the plaintiffs, as potential candidates and contributors, clearly intend to receive and contribute money in excess of the charter amendment limitations, and therefore have standing.

III. Discussion of the Merits

Section D provides:

> No candidate for Mayor or At-Large Council shall accept or solicit, as a noncash monetary (i.e. checks, money orders, credit cards) or in-kind campaign contribution or loan, more than $300 from any person, campaign committee, political party, or political action committee. No candidate for a Council Ward position shall accept or solicit, as a non-cash monetary or in-kind contribution or loan, more than $100 from any person, campaign committee, political party, or political action committee. No person, political action committee, political party, or political campaign

> shall contribute funds or in-kind contributions in excess of said amounts. Contributions from the candidate and labor of volunteers are exempt from these provisions.

In contesting this provision, the primary right asserted by the plaintiffs is the First Amendment right to association. As explained in *Buckley v. Valeo*, 424 U.S. 1 (1976), contribution restrictions bear more heavily on the right to association than on the freedom to speak. *Id.* at 24-25. As a result, "a contribution limitation surviving a claim of associational abridgement would survive a speech challenge as well." *Nixon v. Shrink Missouri Govt. PAC*, 120 S.Ct. 897, 904-5 (2000). While not clearly defining the appropriate level of scrutiny as intermediate or strict, the Supreme Court in *Shrink* summarized the *Buckley* standard as follows:

> . . . a contribution limit involving 'significant interference' with associational rights, could survive if the Government demonstrated that contribution regulation was 'closely drawn' to match a 'sufficiently important interest,' though the dollar amount of the limit need not be 'fine tun[ed],'

Id. at 904 (*quoting Buckley* at 25, 30) (internal citations omitted). The *Buckley* and *Shrink* cases are not designed to stop legislation to clean up the political corruption said to be caused in recent years by large campaign contributions to elected officials and political parties. It is not the function of the courts to take sides in partisan politics or partisan arguments about campaign finance reforms. It is the court's

function to interpret the Constitution which contains no explicit provisions concerning campaign finance or insuring that a particular group may dominate democratic government because of its wealth.

On the surface, it is difficult to see how a restriction on political contributions to a hundred to three hundred dollars in a local election could significantly interfere with a donor's ability to "associate" with a particular political candidate. Limiting the amount of one's contribution does not perceptibly decrease the degree of association or restrict the contributor's ability to associate with the candidate of his choice. Cf. *Buckley*, 424 U.S. at 21 (finding that the size of one's contribution does not necessarily control the strength of one's political voice or influence). By limiting the amount that an individual may contribute to a campaign, the charter amendment does not foreclose that individual from freely associating himself with a candidate or participating personally in the campaign in any other way, including making expenditures on behalf of the candidate with whom he wishes to associate. *See Buckley*, 424 U.S. at 22 (finding that expenditures were more significant than contributions in ensuring that associations could "effectively amplify the voices of their adherents, the original basis for the recognition of the First Amendment freedom of association"). Money buys many of the good things in life, but no one has cited any constitutional history suggesting that money is supposed to be the milk of politics or that large political contributions are a necessary ingredient of representative government protected by the Constitution. Constitutional history does not support the idea that *laissez faire* economics is embodied in

the First Amendment to assure the right to make large campaign contributions. As Holmes noted in his *Lochner* dissent:

> The 14th Amendment does not enact Mr. Herbert Spencer's Social Statistics. . . . [A] Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of *laissez faire*. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar, or novel, or even shocking, ought not to conclude judgment upon the question of whether statutes embodying them conflict with the Constitution of the United States.

Lochner v. New York, 198 U.S. 45, 75-76 (1905) (Holmes, J., dissenting).

Our inquiry does not end here, however, because in *Buckley* and *Shrink*, the Supreme Court broadly defined an individual's right of association to include the ancillary right of the candidate to "amas[s] the resources necessary for effective advocacy." *Shrink*, 120 S.Ct. at 909 (quoting *Buckley*, 424 U.S. at 21). Thus, the Supreme Court would find an unconstitutional infringement of an individual's right of political association where "the contribution limit was *so radical in effect as to render political association ineffective*, drive the sound of the candidate's voice below the level of notice, and render contributions pointless" (emphasis added). *Shrink*, 120 S.Ct. at 909.

Appendix A

Applying the Court's broader definition of association, we hold that the contribution limits in the Charter Amendment are not "so radical in effect to render political association ineffective" or "contributions pointless," and therefore do not violate the First Amendment right of association. The individual non-cash contribution limit enacted by 68% of the voters does not inhibit candidates from accumulating substantial war chests of campaign money, but it does require them to broaden the number of contributors. They may no longer rely on a small number of large donors who want city contracts or other types of political largess. The restriction on contributions clearly achieves the significant objective of the citizens of Akron in limiting the appearance and the reality of corruption in the form of *quid pro quo* agreements and undue political influence exercised by large contributors. At the same time, the limit does not render contributions pointless or make political association ineffective because each candidate has an ample opportunity to raise significant capital to win a local election.

Furthermore, with the many means of contacting voters available to candidates in local elections, it is hard to see how these limitations could "drive the voice of the candidate below the level of notice." With the internet and e-mail readily available to the public, in addition to personal campaigning, mail, radio, television and billboards, candidates have a variety of options for communicating their message to the general voting public, many of which are relatively inexpensive in a town the size of Akron. In addition, local elections such as the ones at issue here rarely rely on the mass media campaigns seen on the national level which are themselves constitutionally limited to $1000 contributions.

In sum, we conclude that neither the voter's right of association nor the candidate's ancillary right arising therefrom are unduly infringed upon by the $100 and $300 contribution limits.

Section C is the next provision of the charter amendment at issue. It governs cash contributions:

> No candidate for Mayor or City Council shall accept, as a campaign contribution, more than $25 in cash (i.e. hard currency) from any person within any fundraising season. No person shall contribute cash in excess of said amount.

We find that the cash contribution limitation of $25 does not violate plaintiffs' right to associate. A companion provision to the non-cash contribution limit, the cash limitation does not limit the overall amount which a person can contribute; it only limits the amount which one can give without some record of a gift. This restriction clearly does not unduly burden a contributor because it does not affect the *amount* that one may contribute; it simply affects the *manner* in which one may contribute. A candidate's ancillary right to associate also does not suffer because a contributor pays by check, credit card, or money order rather than with cash. The provision serves the significant governmental interest of accountability by forcing contributions to be traceable. As a result, it makes corruption more difficult to hide in the face of a campaign audit. It is clearly valid under the First Amendment.

Appendix A

The last two provisions at issue concern campaign disclosure. The first, section G(1), provides:

> Home Address: All persons who make any financial contribution or loan to any campaign for municipal office shall be listed by home address on the candidate's Financial Report filed with the Summit County Board of Elections.

In addition to section G(1) of the charter amendment, contributions to both the federal and Ohio statewide elections are subject to disclosure requirements, with both federal and Ohio state law requiring a "mailing address." *See* Ohio Rev. Code §§ 3517.10(B)(4)(b)(1) and (F)(1); *see* 2 U.S.C. § 431(13)(A) and 11 C.F.R. § 100.12. Disclosure provisions such as these serve a significant governmental interest in providing an accountability mechanism to track campaign donors and safeguard against corruption. There is no meaningful distinction between requiring a donor to list a "mailing" address and requiring a donor to list his "home" address. Most individuals' addresses are listed in the local phone book and are readily available on the Internet. In addition, in order to vote and be placed in the proper precinct, voters must provide their home address. To require donors to provide their home address does not add any substantial burden that unduly burdens their right to association.

The second disclosure provision, section G(2), provides:

> Employer Identification: The candidate for any municipal office shall identify all persons who contribute $50 or more by primary employer.

> If this information is not on file with the Summit County Board of Elections, the contribution shall be returned to the contributor within thirty (30) days after the filing of the candidate's Financial Report.

Again, Ohio statewide and federal elections place similar restrictions on contributions, requiring disclosure of a contributor's current employer where the contribution is over $100.00, and $200.00, respectively. *See* Ohio Rev. Code § 3517.10; *see* 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.3(a)(4)(i). The district court held that because there is no difference in kind between the $100 state statutory restriction (as well as the $200 federal restriction) and the $50 charter amendment restriction, the charter amendment withstands constitutional scrutiny. We agree. There is no basis for drawing a constitutional line distinguishing between the triggering amount of $50 in a local election and $100 in a state election.

In sum, we reverse the district court's grant of summary judgment on the cash and non-cash contributions and the home address disclosure requirement, and we affirm its denial of summary judgment on the employer disclosure requirement.

Appendix A

CONCURRING IN PART, DISSENTING IN PART

RONALD LEE GILMAN, Circuit Judge, concurring in part and dissent-ing in part. I agree with the majority that § 5(C) of the Akron Campaign Finance Charter Amendment, which sets a *cash* contribution limit of $25, is constitutional, and that the district court's judgment should be reversed and remanded on that ground. The majority and I also agree that the district court correctly concluded that § 5(G)(2), which requires public disclosure of the primary employer of individuals who contribute $50 or more, is constitutional. I disagree, however, with the majority's conclusion that § 5(D), which limits the amount that an individual can contribute to candidates for mayor and city council, and § 5(G)(1), which requires public disclosure of the home address of all individuals who make political contributions, are constitutional. Because I believe that these two sections of Akron's charter amendment violate the First Amendment, I would affirm the district court's conclusion that they are unconstitutional as a matter of law.

I. Noncash contribution limits

As explained by the majority opinion, § 5(D) prohibits individuals from contributing (1) more than $300 to a mayoral or a city council at-large candidate, or (2) more than $100 to a city council ward candidate.

Campaign-contribution limits implicate the freedom of political association. *Buckley v. Valeo*, 424 U.S. 1, 22 (1976) (per curiam). Although freedom of political association is a "basic constitutional freedom," *id.* at 25 (internal quotation

marks omitted), a contribution limit can be constitutional if it is " 'closely drawn' to match a 'sufficiently important interest. . . .' " *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 387-88 (2000) (quoting *Buckley*, 424 U.S. at 30). In this case, the intervening defendants assert that the contribution limit was imposed to prevent both corruption and the appearance of corruption. The Supreme Court has held that the prevention of corruption of elected officials or the appearance of such corruption is a "constitutionally sufficient justification." *Buckley*, 424 U.S. at 26. Thus the only question presented by the plaintiffs' challenge to this section of the charter amendment is whether the restriction is "closely drawn" to match this "sufficiently important interest."

In holding that the noncash contribution limits are unconstitutional as a matter of law, the district court emphasized that Akron is a city of over 200,000 people, and that such low contribution limits have never been upheld by a federal court, even in smaller jurisdictions. It thus concluded that the charter amendment is not "closely drawn" to accomplish the valid goal of preventing corruption or the appearance of corruption. The district court reached this conclusion before *Nixon* was decided, but its analysis is consistent with the clarification of *Buckley* provided by the Supreme Court in the *Nixon* case.

Although the majority correctly states the standard announced by the Supreme Court in *Buckley* and clarified by *Nixon*, it fails to apply the standard. Instead, after quoting the relevant passage from *Nixon*, the majority goes on to espouse its theory on the proper role of courts in our society and to indict *Lochner*-era jurisprudence. Majority Op. 5

("It is not the function of the courts to take sides in partisan politics or partisan arguments about campaign finance reforms. It is the court's function to interpret the Constitution which contains no explicit provisions concerning campaign finance or insuring that a particular group may dominate democratic government because of its wealth."); Majority Op. 6 ("Money buys many of the good things in life, but no one has cited any constitutional history suggesting that money is supposed to be the milk of politics or that large political contributions are a necessary ingredient of representative government protected by the Constitution. Constitutional history does not support the idea that *laissez faire* economics is embodied in the First Amendment to assure the right to make large campaign contributions."). Such grandiose statements and general philosophizing are irrelevant to the analytical framework that we are charged with applying pursuant to binding Supreme Court precedent.

One serious problem with the majority's broad generalizations is that they give no indication of any limiting principle. Under the majority's rationale, there apparently would be no constitutionally significant difference between a law imposing a $1,000 contribution limit and one imposing a $1 contribution limit. Surely that is not what the Supreme Court meant to imply when it stated that "the dollar amount of the limit need not be "fine tun[ed]"." *Nixon*, 528 U.S. at 388.

The district court's conclusion that the contribution limits are unconstitutional was based upon a careful examination of the available federal-court precedents. By analyzing these cases, the district court was able to determine the general parameters of what contribution limits have been upheld as

being "closely drawn" to accomplish the valid goal of preventing corruption or the appearance of corruption. After finding that no federal court had ever upheld the drastically low contribution limitations presented in the case before us, even in jurisdictions with populations smaller than Akron's, the district court concluded that the charter amendment contribution limitations were not "closely drawn." *Frank v. Akron*, 95 F.Supp.2d 706, 714-16 & n.14 (N.D. Ohio 1999) (citing *Russell v. Burris*, 146 F.3d 563, 568 (8th Cir. 1998) (overturning contribution limits of $100 and $300 for candidates for statewide offices); *Carver v. Nixon*, 72 F.3d 633, 644 (8th Cir. 1995) (striking down contribution limits of $100 in districts with fewer than 100,000 residents, $200 in districts with 100,000 or more residents, and $300 for candidates for statewide offices); *SEIU v. Fair Political Practices Comm.*, 955 F.2d 1312, 1321 (9th Cir. 1992) (overturning a contribution limit of $1,000 per year for candidates for state and local offices); *California Prolife Council PAC v. Scully*, 989 F. Supp. 1282, 1299 (E.D. Cal. 1998) (voiding contribution limits of $100 in districts with fewer than 100,000 residents, $250 in districts with 100,000 or more residents, and $500 for candidates for statewide offices); *Nat'l Black Police Ass'n v. Dist. of Columbia Bd. of Elections and Ethics*, 924 F. Supp. 270, 282 (D.D.C. 1996) (striking down a Washington, D.C. contribution limit of $100 for candidates for mayor and other district-wide offices), *vacated as moot sub nom., Nat'l Black Police Ass'n v. Dist. of Columbia*, 108 F.3d 346, 354 (D.C. Cir. 1997). The majority opinion fails to address any of these precedents. Because the relevant case law indicates that the Akron contribution limits are not "closely drawn," I would affirm the district court's conclusion that § 5(D) is unconstitutional.

II. Home-address disclosure requirement

Section 5(G)(1) of the charter amendment provides that: "All persons who make any financial contributions or loan to any campaign for municipal office shall be listed by home address on the candidate's Financial Report filed with the Summit County Board of Elections."

The Supreme Court has "repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley*, 424 U.S. at 64. As a result, "the subordinating interests of the State must survive exacting scrutiny," and there must "be a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed." *Id.* (footnote omitted). The intervening defendants contend that the disclosure requirement is "designed to help citizens understand who is potentially influencing local politicians and why they are trying to do so." They also point out that similar disclosures are required pursuant to both Ohio and federal law.

In holding the home-address disclosure requirement unconstitutional as a matter of law, the district court found that the comparable state law does not require disclosure of the contributor's *home* address. *Frank*, 95 F. Supp. 2d at 718 (citing Ohio Rev. Code § 3517.10(B)(4)(b)(1) and (F)(1)). As a result, the district court concluded that Akron's home-address disclosure requirement is not "closely drawn" to accomplish its valid goal of preventing corruption or the appearance of corruption. In reaching this conclusion, the district court emphasized that mandatory disclosure of a

home address "would seriously impinge the First Amendment rights of anyone who may be reluctant, for security reasons, to reveal his or her home address." *Id.*

The majority opinion, which devotes only one paragraph to this issue of considerable importance, reverses the district court's decision after concluding that "[t]here is no meaningful distinction between requiring a donor to list a 'mailing' address and requiring a donor to list his 'home' address." Majority Op. 9. One of the majority opinion's key arguments is that "[m]ost individuals' addresses are listed in the local phone book and are readily available on the Internet." *Id.*

But requiring all contributors to disclose their home addresses is unnecessarily invasive. Federal law, for example, accomplishes the same asserted state interest by requiring contributors to disclose only a "mailing address." 2 U.S.C. § 431(13)(A); 11 C.F.R. § 100.12. The intervening defendants have also failed to establish that, at least with regard to small contributions, there is "a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed." *Buckley*, 424 U.S. at 64. I would therefore affirm the district court's conclusion that the home-address disclosure requirement is unconstitutional.

For all of the reasons set forth above, I respectfully dissent from those portions of the majority's opinion that uphold §§ 5(D) and 5(G)(1) of the Akron Campaign Finance Charter Amendment.

APPENDIX B — MEMORANDUM OPINION AND ORDER WITH JUDGMENT ENTRY DATED AND FILED DECEMBER 2, 1999

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. 5:98 CV 2862

JUDGE DAN AARON POLSTER

JOHN V. FRANK, et al.,

Plaintiffs,

vs.

CITY OF AKRON, et al.,

Defendants.

MEMORANDUM OF OPINION AND ORDER

Before the Court is Plaintiffs' motion for summary judgment challenging a campaign finance reform amendment to the City of Akron's Charter passed by ballot initiative in November 1998 (Doc. No. 36). Defendant City of Akron has filed a response (Doc. No. 44), as have Intervening Defendants "Yes on Issue 11 Campaign" and Gregory D. Coleridge (Doc. No. 57), and Intervening Defendants Mike Parsons, Bruce Kilby, and Patricia Longville (Doc. No. 58). Specifically, Plaintiffs seek summary judgment declaring Sections 5(C), (D), (G)(1) and (G)(2) of the City of Akron's

Charter Amendment unconstitutional. Plaintiffs further seek an order permanently enjoining the enforcement of these provisions.

For the reasons that follow, Plaintiffs' Motion for Summary Judgment (Doc. No. 36) is GRANTED with respect to Sections 5(C), (D), and (G)(1) of the Charter Amendment. Plaintiffs' motion is DENIED with respect to Section 5(G)(2) since the Court finds that this provision is not unconstitutional and may be enforced.

I. BACKGROUND FACTS

On November 3, 1998, an overwhelming majority of the voters in the City of Akron supported issue 11, a ballot initiative, which amended the City Charter to add a section on Campaign Finance Reform. The Charter Amendment sets limits on the amount of campaign contributions and loans, requires disclosure of a contributor's home address and primary employer, and places restrictions on the fund-raising season for political campaigns.[1]

On December 10, 1998 the instant action was filed by the following six individual plaintiffs: John V. Frank, Marco Summerville, John W. Valle, Robert G. Konstand, Nancy Heslop, and Charles Walker. Each of the Plaintiffs are residents of the City of Akron who have participated in and who desire to continue to participate in electoral politics by, among other activities, making and receiving campaign contributions or loans. Together they brought this action for

1. A copy of the Charter Amendment is attached as Exhibit A.

injunctive and declaratory relief alleging that the Akron Campaign Finance Charter Amendment is unconstitutional as a matter of law.

Plaintiffs maintain that the Ordinance abridges their rights of free speech, free association and equal protection of the laws under the First and Fourteenth Amendments to the Constitution of the United States. In addition, Plaintiffs claim that provisions of the Ordinance are vague and overbroad, thereby depriving them of rights secured under the First and Fourteenth Amendments of the Constitution and the laws of the State of Ohio.

On December 15, 1998, by Stipulation and Order, a Preliminary Injunction was entered enjoining the enforcement of Sections 5(B), (C), (D), (E), (F), (G)(2) and (I) of the Charter of the City of Akron.

On December 16, 1998 Bruce Kilby, Mike Parsons and Patricia Longville filed a Motion to Intervene as party defendants in the case. (*Doc. No. 6.*) On December 22, 1998, a group of citizens identified as "Yes on Issue 11 Campaign" together with Gregory D. Coleridge similarly filed a Motion to Intervene. (*Doc. No. 10.*) Both motions to intervene were granted by the Court on January 11, 1999.

A Case Management Conference was conducted on February 22, 1999, with all parties or their representatives in attendance. On April 8, 1999, the Court conducted a Status Hearing, which was followed by a telephonic status hearing on April 15, 1999.

Appendix B

On May 15, 1999, Plaintiffs filed a Motion for Partial Judgment on the Pleadings, arguing that Sections 5(B), (E), (F) and (I) of the Charter Amendment are unconstitutional on their face.[2] (Doc. No. 30). Arguably conceding the fact that such provisions violated the First Amendment, neither group of Intervening Defendants filed any opposition to this pleading. By Order of June 9, 1999, the Court granted Partial Judgment on the Pleadings as to Sections 5(B), (E), (F) and (I) of the Charter Amendment, declaring the same to be *null and void.*[3] (Doc. No. 33).

The *remaining four* Subsections, namely C, D, G(1) and G(2) of Section 5, are the subject of the instant Motion for Summary Judgment filed by the Plaintiffs on June 25, 1999. As described below:

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2. These subsections limited the fund-raising season from the 1st day of December prior to the General Election until the Thursday preceding the General Election, and prohibited any fund-raising activity at any other time (Subsection B); provided that no more than 25% of a candidate's aggregate contributions could be comprised of contributions from nonresidents (Subsection E); required any surplus campaign funds to be deposited into the General Fund for the City of Akron or to one or more local charities within 60 days following a General Election (Subsection F), and provided a criminal penalty for any violation of the Charter Amendment (Subsection I).

3. Many of the provisions of the Ordinance were so clearly unconstitutional that even the Intervening Defendants did not contest the Court's granting partial judgment on the pleadings to the Plaintiffs and permanently enjoining implementation and or enforcement of those provisions. The section limiting the percentage of a candidate's funds that could be raised from contributors outside the Akron city limits, for example, would have the effect of absolutely prohibiting certain individuals, who might work in the City of Akron but reside elsewhere, from contributing to the candidate of their choice.

Appendix B

Subsection C	sets a *cash* contribution limit of $25 to any candidate for Mayor or City Council within any fund-raising season.
Subsection D	sets a *noncash* contribution limit for a Mayoral or At-Large Council candidate at $300, and for a Ward Council candidate at $100, from any person, campaign committee, political party or political action committee, per election cycle.
Subsection G(1)	requires disclosure of the home address of all persons who make any financial contribution or loan to any campaign for municipal office (regardless of the amount of contribution.)
Subsection G(2)	requires the identification and disclosure of the primary employer of every person who contributes $50 or more to any campaign for municipal office.

Plaintiffs urge that established precedent demonstrates that the overall contribution limits of the Charter Amendment

cannot withstand scrutiny in a city of this size, as a matter of law. "The cash contribution limits and disclosure requirements are moreover clearly unconstitutional on their face, without the need for a comparative analysis between Akron and other political entities." *Plaintiffs' Br. at 3.*

From the outset, the City of Akron has taken the position that the entire Charter Amendment is manifestly unconstitutional. In its response, the City of Akron affirmatively states that it concurs with Plaintiffs' analysis of the pertinent case law as well as Plaintiffs' conclusions that the challenged sections are unconstitutional. *Defendant's Br. at 1.* Hence, Plaintiff and Defendant agree that adjudication of this matter is readily amenable to summary judgment as it is purely a question of law to be determined by the Court.

The Intervening Defendants, however, vigorously oppose the granting of summary judgment and argue that Plaintiffs have not met their burden under Federal Rule of Civil Procedure 56.[4] They further reiterate their objection to the

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4. The Intervening Defendants also challenge Plaintiffs' standing to bring this action, alleging that Plaintiffs have failed to show an injury in fact, or a personal stake in the case. *Intervening Defendant's Resp. (Doc. No. 57) at 10-11 and (Doc. No. 58) at 8-9.*

But see *Plaintiffs' Reply (Doc. No. 67) at 14-18* and the cases cited therein. Where "plaintiffs allege an intention to engage in a course of conduct arguably affected with a constitutional interest which is clearly proscribed by statute, courts have found standing to challenge the statute even absent a specific threat of enforcement." *United Food & Commercial Workers International Union v. IBP, Inc.*, 857 F.2d 422, 428 (8th Cir. 1988).

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Court's denial of discovery in this matter, arguing for their right to uncover the true existence of corruption in the City of Akron's political arena.[5] In support of their opposition and contentions, Intervening Defendants submitted two substantial Evidentiary Appendices pursuant to Rule 56(e).

II. SUMMARY JUDGMENT STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The court is to determine "whether there is the need for a trial—whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The court views the evidence of record and draws all reasonable inferences in the light most favorable to the nonmoving party. *See LaPointe v. United Autoworkers Local 600*, 8 F.3d 376, 378 (6th Cir. 1993).

(Cont'd)

Accordingly, Intervening Defendants' arguments with respect to Plaintiffs' standing are without merit.

5. On July 28, 1999, the Court entered an Order denying the Intervening Defendants' motion for leave to seek discovery that would allegedly lead to evidence of real corruption within the City of Akron. Reasoning that such discovery would only serve as a "fishing expedition," the Court ruled that such additional discovery was not necessary in order to obtain facts essential to justify the party's opposition to the motion for summary judgment. (Doc. No. 49).

"[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson*, 477 U.S. at 247-248. In order for there to be a genuine issue for trial, there must be sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. *Id.* at 249. Having discussed the Rule 56 standard of review, the Court now turns to the merits.

III. ANALYSIS

The touchstone of the constitutional analysis of campaign finance restrictions remains *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). It is established that "contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities." *Id.* at 14. In *Buckley*, the plaintiffs brought First Amendment challenges to various provisions of the Federal Election Campaign Act of 1971, which included a $1,000 limitation on federal campaign contributions.

In evaluating the limitations on both political contributions and expenditures, *Buckley* established that "contribution and expenditure limitations impose direct quantity restrictions on political communication and association by persons, groups, candidates, and political parties." *Id.* at 18. Striking down the limitations placed upon campaign *expenditures*, but upholding a $1000 limitation on campaign *contributions*, the Court ruled that while limitations on contributions burden First Amendment rights, such limits are not as constitutionally suspect as expenditure limitations. It explained that the *expenditure* limits

> necessarily reduce[] the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached (footnote omitted). This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money.

Id. at 19. However, by contrast, the Court noted that *contribution* limits

> entail[] only a marginal restriction upon the contributor's ability to engage in free communication. A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution. . . . A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication.

Id. at 20-21 See also *Id.* at 23 (concluding that the Act's "expenditure ceilings impose significantly more severe restrictions on protected freedoms of political expression and association than do its limitations on financial contributions.")

In view of these fundamental concerns, the Court held that campaign contribution limits are "subject to the closest

scrutiny." *Buckley,* 424 U.S. at 25 (quoting *NAACP v. Alabama,* 357 U.S. 449, 460-61 (1958)).[6] Under this standard, the Supreme Court set forth a two part balancing test which provides that "a significant interference with protected rights of political association may be sustained" *only if* the defendant can demonstrate "a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." *Id.* at 25; *See also Carver v. Nixon,* 72 F.3d 633, 636-638 (8th Cir. 1995).

In upholding the constitutionality of the $1,000 contribution limit for federal elected offices, the *Buckley* Court reasoned that the $1,000 limit focused precisely on the problem of large campaign contributions and, therefore, was narrowly tailored to the goal of limiting corruption and the appearance of corruption. *Buckley,* 424 U.S. at 26-28. However, the Court recognized that "contribution restrictions *could have a severe impact* on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy." *Id.* at 21 (emphasis added).

Although the Supreme Court declined to analyze the propriety of the specific dollar amount of the contribution limits, it nevertheless cautioned that if the contribution limits were *too low,* the limits could indeed be unconstitutional. *Id.* at 30.[7]

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6. While the *Buckley* Court did not employ strict scrutiny language, subsequent case law makes clear that strict scrutiny applies. *Shrink Missouri Government PAC v. Adams,* 161 F.3d 519 (8th Cir. 1999); *Kruse v. City of Cincinnati,* 142 F.3d 907, 913 (6th Cir. 1998).

7. *Buckley* stressed that the judiciary "has no scalpel to probe" specific dollar limitations. "Such distinctions in degree become

(Cont'd)

Appendix B

A.

The Intervening Defendants, who were among the major sponsors of the successful initiative which produced the Akron Campaign Finance Ordinance, wished to conduct discovery to prove that there is a substantial amount of corruption in Akron. The Court has determined that the level of corruption in the City of Akron, if any, is not relevant to the Constitutional inquiry that must be made. For even if there is no corruption whatsoever, the citizens have an interest in keeping things that way. Courts have consistently held that preventing corruption or even the appearance of corruption is a compelling state interest (see discussion below). It is for this reason that the Court determined that this case was ripe for summary judgment without the need to conduct discovery.

The exponential increase in campaign fund-raising and expenditures for offices at all levels of government is a threat to the American system of participatory democracy. Fund-raising has become an all-consuming task for too many public officials, and there is growing concern about the effect of all this campaign money on the quality and character of official decision making. So long as *Buckley v. Valeo* is the law of the land, however, campaign contributions and expenditures must be treated as a form of political expression

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significant only when they can be said to amount to differences in kind." *Id.* at 30. Thus, this Court does not sit to second guess the majority of the voters of the City of Akron as to the size of the limit. Rather, this Court must only determine whether the limitations are within the constitutional parameters.

protected by the First Amendment. Any limitations must be subject to the closest scrutiny, and the Court must determine if there would be less intrusive measures which might accomplish the same objective.

B.

Viewed in this light, this Court must now examine whether the limitations and restrictions in the City of Akron's Campaign Finance Reform Charter Amendment demonstrate "a sufficiently important interest" and whether they "employ[] means closely drawn to avoid unnecessary abridgment of associational freedoms." *Buckley,* 424 U.S. at 25.

Addressing the first prong of this balancing test, the Court must determine whether the governmental interests advanced in support of the Campaign Finance Reform are sufficiently compelling to permit the City of Akron to restrict First Amendment freedoms.

In *Buckley,* the Court found that "the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office" was a compelling state interest. *Id.* at 25. The Supreme Court reiterated this position five years later, holding that "*Buckley* identified a single narrow exception to the rule that limits on political activity were contrary to the First Amendment. The exception relates to the perception of undue influence of large contributors to a candidate." *Citizens Against Rent Control v. Berkeley,* 454 U.S. 290, 296-97 (1981) (emphasis omitted).

Appendix B

Subsequently, in *Federal Election Commission v. National Conservative Political Action Committee,* 470 U.S. 480, 496-97 (1985), the Supreme Court announced that "[p]reventing corruption or the appearance of corruption are the *only* legitimate and compelling government interests thus far identified for restricting campaign finances." (emphasis added). *See also Kruse v. City of Cincinnati,* 142 F.3d 907, 913 (6th Cir. 1998). The Supreme Court has consistently held that preventing perceived corruption is indeed a compelling state interest. *Kentucky Right to Life, Inc. v. Terry,* 108 F.3d 637 (6th Cir. 1997) (citing *Austin v. Michigan Chamber of Commerce,* 494 U.S. 652, 658 (1990)).

In the instant action, the Intervening Defendants maintain that the limitations and restrictions on political contributions within the City of Akron represent a substantial and compelling interest because they serve to prevent corruption and the undue influence that is associated with large contributions.[8] The *Preamble* to the Campaign Finance Reform Charter Amendment succinctly sets forth the purpose and the compelling governmental interest that motivated the citizen initiative:

> In order to demonstrate and promote ethics by government within the City of Akron; to further

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8. In evaluating the first prong of the *Buckley* balancing test, neither the Plaintiffs nor the City of Akron vigorously challenge the legitimacy or sufficiency of the compelling state interest advanced by the Intervening Defendants. Instead, their arguments are primarily focused on the second prong of the applicable First Amendment analysis, i.e. *whether the limitations and restrictions are narrowly tailored to achieve a compelling governmental interest.*

> integrity in campaigns for public office; to prevent corruption and/or the appearance of corruption; and to restore and enhance the faith of the citizenry in government, we the people of this City do hereby establish this Amendment to the Charter of the City of Akron on Campaign Finance Reform.

Supplement to Complaint; Exhibit 1, Section 5(A).

While mindful of the approach taken by the Eighth Circuit in *Shrink Missouri Government PAC v. Adams* (requiring documented *proof* of *actual problems stemming from corruption* before it would even consider whether the government had established a compelling state interest),[9] this

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9. In *Shrink Missouri Government PAC v. Adams,* 161 F.3d 519, 521-22 (8th Cir. 1998), the Eighth Circuit expressed its dissatisfaction with the *mere contention* that the states have an interest in maintaining the integrity of their elections and refused to find a compelling state interest absent proof of "a real problem with corruption or a perception thereof as a direct result of large campaign contributions." *Id.* Requiring "demonstrable evidence of . . . genuine problems that resulted from contributions in amounts greater than the limits," the Court held as a matter of law, the State had failed to come forward with evidence to prove a compelling interest that would be served by the restrictions on the campaign contributions. *Id.* at 522.

Challenging the Eighth Circuit's decision, the state filed its appeal to the United States Supreme Court. Granting certiorari on January 25, 1999, (*Nixon v. Shrink Missouri Government PAC*, 119 S.Ct. 901, case no. 98-963), the Supreme Court heard oral arguments on October 5, 1999. With a decision now not likely until

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Court chooses to follow the overwhelming line of authority which provides that safeguarding the integrity of a political system is a substantial and a compelling interest. Moreover, this Court recognizes that avoiding even the appearance of corruption in the political process demonstrates a compelling state interest. Accordingly, the Court finds that the City of Akron's Campaign Finance Reform was prompted by "a sufficiently important interest" to justify regulation.

C.

Having established a compelling state interest in regulating campaign contributions, the governmental body of the City of Akron must also prove that these challenged provisions of the Charter Amendment are narrowly tailored to serve that interest. At this second stage of analysis, the Court must now determine whether, in establishing these contribution limits, the City has employed means closely drawn to avoid unnecessary abridgement of First Amendment rights.

It is undisputable that a court must strike down a challenged regulation that is "not narrowly tailored to achieve a compelling governmental interest." *McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 347 (1995); *Carver,* 72 F.3d at 638; *Buckley,* 424 U.S. at 25. It is *this* second prong of the *Buckley* test which frames the overriding issue

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spring, we must wait and see whether the Eight Circuit's approach will be upheld. In no uncertain terms, this appeal challenges the continued validity of the limits imposed by *Buckley v. Valeo* more than 23 years ago.

in this case. And, it is this second stage of analysis that leads this Court to conclude that three of the remaining four limitations in the City of Akron's Campaign Finance Reform Amendment pose an unconstitutional burden on political speech and association. *Buckley,* 424 U.S. at 25. For the reasons that follow, the Court finds that these limitations on campaign contributions have not been so narrowly tailored to survive the constitutional scrutiny which must be applied.

1. *$300 limit for Mayor; $100 limit for City Council:*

Examining each of the four challenged provisions individually, Section 5(D) of the City of Akron's Charter Amendment provides:

> D. *LIMITS ON NONCASH MONETARY AND IN-KIND CONTRIBUTIONS AND LOANS.* No candidate for Mayor or At-Large Council shall accept or solicit, as a noncash monetary (i.e. checks, money order, credit cards) or in-kind campaign contribution or loan, more than $300 from any person, campaign committee, political party, or political action committee. No candidate for a Council Ward position shall accept or solicit, as a noncash monetary or in-kind campaign contribution or loan, more than $100 from any person, campaign committee, political party, or political action committee. No person, political action committee, political party or political campaign shall contribute funds or in-kind contributions in excess or said amounts.

Appendix B

> Contributions from the candidates and labor of volunteers are exempt from these provisions.

Supplement to Complaint; Exhibit 1, Section 5(D).

Over twenty-three years ago, the *Buckley* Court found that a $1,000 limit was sufficient to pass constitutional muster because it was narrowly tailored to serve the state's interest in preserving the integrity of the political system. Today, the Intervening Defendants are contending that contribution limits three to ten times *less than* that those upheld in *Buckley* should similarly pass constitutional muster because, they too, are narrowly tailored to address the corrupting influence of money.

The Intervening Defendants maintain that:

> For elections in which one or two thousand people were voting, the Ward level elections, $100 *seemed to* provide a reasonable balance between the corrupting power of money, the right of people to donate to council candidates, and the need for candidates to raise the two to five-thousand dollars needed to run a successful campaign.
>
> For elections in which twenty-thousand people were participating, the At-large and Mayoral races, $300 *seemed to* provide the proper balance between Constitutional rights and the threat of corruption and yet leave room for candidates to raise ten to forty-thousand dollars necessary for such campaigns.

Intervening Defendants Mem. In Opp'n (Doc. No. 58) at 5-6 (emphasis by the Court).

Appendix B

The Intervening Defendants seek to justify the $100 and $300 contribution limits with reference to what they say are appropriate overall spending limits ($5,000 and $40,000.) However, *Buckley* teaches us that expenditures *cannot* be limited. *Buckley,* 424 U.S. 1; *Kruse v. City of Cincinnati,* 142 F.3d 907 (6th Cir. 1998). To limit expenditures indirectly, by imposing extremely low contribution limits, would also be unconstitutional.

Having reviewed the applicable case law, the Court has concluded that there is no Sixth Circuit precedent.[10] Arguing that there *is* a similar case with binding application, the Intervening Defendants cite to *Kentucky Right to Life, Inc. v. Terry,* 108 F.3d 637 (6th Cir. 1997) stating that "the Sixth Circuit . . . upheld a *statewide* limitation of $500.00," and therefore, "$100.00 for a ward race and $300.00 for a city wide race is reasonably designed based upon the level of participation in municipal elections." *Intervening Defendants' Resp. (Doc. No. 57) at 19.*

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10. Inferring that comparing similar cases elsewhere across the nation is fruitless, the Intervening Defendants state: "Akron voters decided $26.00 cash contribution[s], $101.00 contributions to ward council candidates and $301.00 to Mayoral or City Council At-Large candidates crossed the threshold from robust political advocacy into the nefarious world of political corruption. Comparing dollar amounts from across the country begs the question. Instead the focus should and must be whether the limitation is 'integral to the effectiveness of the overall . . . scheme of combating corruption in the political process.' *Buckley v. Valeo, supra* at 38." *Intervening Defendants' Resp. (Doc. No. 57) at 19.*

Contrary to Defendant-Intervenor's assertions, this Court chooses to review and compare the persuasive line of case law authority that does exist.

Appendix B

In *Terry,* First Amendment challenges were made to sections of the Kentucky Campaign Finance Law setting monetary limitations on political contributions. Among other limitations, the statute prohibited any candidate or campaign committee from accepting a contribution of more than $500 from any one person, committee or organization in any one election. It also limited annual aggregate contributions by individuals to all permanent committees to $1,500.

While the Sixth Circuit did find the statute withstood constitutional challenge, it did *not* uphold a $500 limitation as the Intervening Defendants argue. A *complete* reading of *Terry* discloses that before it was even considered by the Sixth Circuit, the Kentucky General Assembly amended the statute, directly affecting several of the challenged provisions on appeal. The amendment *raised* the dollar limitations on contributions by individuals and permanent committees from $500 to *$1,000,* thereby eliminating the necessity of examining the constitutionality of a $500 cap. *Terry,* 108 F.3d at 643 and n.19.

Intervening Defendants also cite *Terry* in urging this Court to apply the Sixth Circuit's analysis "recognizing the inherent differences between federal and local elections." *Intervening Defendants' Resp. (Doc. No. 57) at 19.* Distinguishing the Kentucky limitations from those imposed in federal elections, the Sixth Circuit reasoned:

> Local and state elections in Kentucky simply do not involve the enormous financial contributions generally associated with federal elections. Consequently, a relatively small contribution to a

> local Kentucky campaign may create a substantial likelihood of corruption. Recognizing the inherent differences between federal and local elections expenditures, we believe that the $1,500 limit for Kentucky state and local elections does not amount to a difference in kind from the $25,000 limit upheld in *Buckley* in the context of federal elections.

Terry, 108 F.3d at 648, 649. While this Court too recognizes the inherent differences between a locally run campaign with that of a federal election, *Terry* does not save the low limits set by the City of Akron's Charter Amendment. The Court is certainly mindful of the fact that local elections do *not* involve the enormous financial contributions generally associated with federal elections. And it is also true that a relatively small contribution to a local campaign could create a substantial likelihood of corruption. But *Terry*'s $1,000 and $1,500 limitations in no way compare to the $100 and $300 limits imposed by the Akron Charter Amendment.

In *Day v. Holahan,* 34 F.3d 1356, 1365 (8th Cir. 1994), the Eighth Circuit held that a Minnesota statute setting a $100 limit on contributions to or by political committees was so low that it infringed upon the citizens' First Amendment right to political association and free political expression. It found that the $100 limit "significantly impairs the ability of individuals and political committees and funds to exercise their First Amendment rights." *Id.* at 1366. The Court held that a $100 limit "is too low to allow meaningful participation in protected political speech and association, and thus is not

narrowly tailored to serve the state's legitimate interest in protecting the integrity of the political system." *Id.*[11]

In *Carver v. Nixon,* 72 F.3d 633, 641 (8th Cir. 1995), the Court invalidated campaign contribution limits contained in a citizen initiative passed by the Missouri electorate in the November 1994 election. The limits were set according to the district size: (1) $100 per candidate in districts with fewer than 100,000 residents; (2) $200 per non-statewide candidate in districts of 100,000 or more residents; and (3) $300 per statewide candidate (i.e., candidates seeking election to the office of Governor, Lieutenant Governor, Attorney General, Auditor, Treasurer, and Secretary of State).

Describing the initiative's limits as "dramatically lower" than those approved in *Buckley, id.* at 641-42, and lower, in fact, than those of any other state, *id.* at 642, the *Carver* court concluded that the initiative's limits were "not closely drawn to reduce corruption or the appearance of corruption associated with large campaign contributions." *Id.* at 644.

Similarly, in *California Prolife Council v. Scully,* 989 F.Supp. 1282 (E.D. Cal. 1998), the court found

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11. *Day* took into account the effect of inflation in determining the constitutionality of campaign contribution limits. The Court looked to the $1000 limit in *Buckley* and applied an adjusted rate for inflation to formulate what the 1994 value of a $1000 was in 1976. The Court observed that "a $100 contribution in 1976 [the year that *Buckley* was decided] would have a value of $40.60 in 1994 dollars, or approximately four percent of the $1,000 limit approved in *Buckley.*" *Day,* 34 F.3d at 1366. This observance about the effect of inflation was applied again, one year later in *Carver v. Nixon,* 72 F.3d 633, 641 (8th Cir. 1995).

unconstitutional a California initiative which limited contributions to no more than $100 per election in small local districts (less than 100,000 residents), $250 per election for Senate, Assembly, Board of Equalization and large local districts, and $500 per election for statewide office. The Court found that while there was a legitimate governmental interest served by contribution limits, those limits were not narrowly drawn to achieve the legitimate purpose of preventing corruption or its appearance. "A statute is closely drawn when the means chosen do not 'burden substantially more speech than is necessary to further the government's legitimate interests.' " *Id.* at 1296. The court held that campaign contributions were restricted to a degree unnecessary to achieve the governmental purpose, and therefore violated the First Amendment. *Id.*

Finally, on facts quite similar to the case at bar, the District Court for the District of Columbia struck down limitations on contributions in *National Black Police Assoc. v. District of Columbia Bd. of Elections and Ethics,* 924 F.Supp. 270 (D.D.C.1996). Political candidates, contributors, and political organizations brought an action against the District of Columbia and the Board of Elections challenging the constitutionality of a voter initiative restricting campaign contributions for *local* political candidates. Contributions to candidates for Mayor, D.C. Council Chairman or at-large Council members were limited to a maximum of $100 per candidate, and contributions to ward Council member candidates or Board of Education member candidates were limited to a maximum of $50 per candidate. In addition, the initiative prohibited any contributor from giving more than $600 to all candidates in any one election.

Appendix B

Holding that the challenged limits failed *both* prongs of the *Buckley* test, the District Court enjoined the contribution limits as unconstitutional, finding "no evidence that the caps were closely drawn to prevent unnecessary abridgement of free speech rights" and that such limitations "impermissibly burdened candidates' First Amendment right to freedom of speech." 924 F.Supp. at 282. However, the Court of Appeals for the District of Columbia remanded the case[12] after concluding that (1) the case was mooted by the passage of legislation increasing the contribution limits[13], and (2) vacated the underlying opinion of the District Court.

Intervenor Defendants have not identified a case, in this circuit or elsewhere, in which a federal court has upheld such low contribution limits as those contained in the City of Akron's Charter Amendment. This Court has not found a case in which a federal court has sustained limits this low for a city as large as Akron, and numerous courts have struck down similar limitations.[14]

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12. *National Black Police Assoc. v. District of Columbia,* 108 F.3d 346 (D.C. Cir. 1997).

13. The new campaign legislation increased the contribution ceilings so that the limits became $2,000 for mayoral candidates, $1,500 for Council Chairman candidates, $1,000 for at-large Council member candidates, $500 for ward Council member candidates and at-large Board of Education member candidates, and $200 for ward Board of Education member candidates, and changed the maximum cap on contributions per election to $8,500. *National Black Police Association,* 108 F.3d at 348.

14. *Kentucky Right to Life, Inc. v. Terry,* 108 F.3d 637 (6th Cir. 1997); *Shrink Missouri v. Adams,* 161 F.3d 519 (8th Cir. 1998); (Cont'd)

Unfortunately, in this day and age, $100 is a relatively insignificant amount of money. How can you tell a person he or she can't spend more supporting a candidate for City Council than it costs to take a family of four to a major league baseball game? This Court is of the belief that the $100 and $300 limits will significantly impair the ability of individuals in Akron to exercise their political rights. These limits are simply too low to allow for appropriately robust participation in protected political speech and association.

It is with considerable pause and deliberation that the Court strikes down the contribution limitations, because courts must accord substantial deference to the judgments of the electorate concerning the level of contribution limits. *California Prolife Council v. Scully,* 989 F.Supp. 1282 (E.D. Cal. 1998). An ordinance or statute passed by citizen initiative or referendum is entitled to the same deference as one passed by a City Council or legislature. *Federal Election Comm'n v. National Right to Work Committee,* 459 U.S. 197, 210 (1982); *Buckley,* 424 U.S. at 30.

However, that such ordinance is enacted directly by the voters rather than by the state legislature does not change the constitutional analysis. "[V]oters may no more violate the Constitution by enacting a ballot measure than a

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Carver v. Nixon, 72 F.3d 633, 636-638 (8th Cir. 1995); *Russell v. Burris,* 146 F.3d 563 (8th Cir.1998); *SIEU v. Fair Political Practice Comm.,* 955 F.2d 1312 (9th Cir. 1992); *National Black Police Assoc. v. District of Columbia Bd. of Elections and Ethics,* 924 F.Supp. 270 (D.D.C. 1996); *California Prolife Council v. Scully,* 989 F.Supp. 1282 (E.D. Cal. 1998).

legislative body may do so by enacting legislation." *Citizens Against Rent Control v. Berkeley,* 454 U.S. 290, 295 (1981).

While the Court may embrace the motivation of the sponsors of the initiative creating the Akron Campaign Finance Ordinance, and by inference the majority of the electorate which passed the legislation, the contribution limitation provisions of the Ordinance cannot survive constitutional challenge when measured against *Buckley* and its progeny. The dollar limitations on campaign contributions are simply too low and have not been tailored to minimize the chilling effect on political expression. Section 5(D) of the Charter Amendment is unconstitutional.

2. *Subsection C—$25 limitation on cash contributions:*

Plaintiffs also challenge Section 5(C), which effectively limits to $25 the amount any individual can contribute in cash to any one political candidate in any one election year.

> C. *LIMITS ON CASH CONTRIBUTIONS.* No candidate for Mayor of City Council shall accept, as a campaign contribution, more than $25 in cash (i.e. hard currency) from any person within any fundraising season. No person shall contribute cash in excess of said amount.

Supplement to Complaint; Exhibit 1, Section 5(C).

Courts have sustained limitations on cash contributions to political campaigns, for the obvious reason that the system

could not tolerate citizens handing public officials large amounts of cash. There is no question that restricting the amount of cash contributions that can be handed to a candidate is a permissible and fundamentally necessary limitation. Cash cannot be easily traced, and it is much easier to evade limitations with cash contributions. Twenty-five dollars, however, is too low a limit.

First of all, it is hard to imagine influencing any public official for the sum of $25. Section 5(C) prohibits giving an amount of cash to a candidate which is small enough that it could neither corrupt nor even give the appearance of corruption. The Intervening Defendants have not identified, nor has the Court found, any case where a federal court upheld a limitation on cash contributions as low as $25. This limitation is not narrowly tailored to address the evil which may be regulated.

Second, there are many people who do not have checking accounts, and there are others who wish to give modest contributions anonymously. A $25 cash contribution limitation infringes upon the First Amendment rights of these citizens of the community.

Once again, this Court does not purport to state what the lowest permissible limitation on cash contributions would be. It may only address the constitutionality of the limits that have been put into place by the electorate. And here, the limits at issue are so small that they run afoul of the Constitution by unnecessarily restricting protected political expression. Section 5(C) of the Charter Amendment is therefore unconstitutional.

Appendix B

3. *Subsection G(1)—Public disclosure of contributors home address regardless of the amount contributed:*

G. *DISCLOSURE*

(1) Home Address: All persons who make any financial contributions or loan to any campaign for municipal office shall be listed by home address on the candidate's Financial Report filed with the Summit County Board of Elections.

Supplement to Complaint; Exhibit 1, Section 5(G)(1).

The Federal Election Campaign Act (FECA) requires that political committees keep records of the names and addresses of those who make contributions in excess of $10, and requires the disclosure of the contributor's occupation and principal place of business if his contribution exceeded $100. The Supreme Court analyzed these disclosure requirements in a privacy context and voted to uphold such requirements, finding there "are governmental interests sufficiently important to outweigh the possibility of infringement." *Buckley,* 424 U.S. at 66.[15]

15. The Supreme Court articulated three categories of governmental interests which it balanced against the contributor's right of privacy. First, disclosure provides the electorate with information as to where political campaign money comes from and alerts the voter to the interests to which a candidate is most likely to be responsive (and thus facilitate predictions of future performance in office). Second, disclosure requirements deter actual corruption (Cont'd)

As in *Buckley,* the Intervening Defendants allege similar interests and state that the purpose for requiring the listing of the contributor's home address (and employer) was "designed to help citizens understand who is potentially influencing local politicians and why they are trying to do so." *Intervening Defendants' Resp. (Doc. No. 58) at 6.* They further argue that the Ohio statute already requires such a disclosure, and that based upon the validity of O.R.C. § 3517.10, the city of Akron's Charter Amendment should likewise withstand a privacy challenge.

However, review of O.R.C. § 3517.10(B)(4)(b)(i) and Subdivision (F)(1), defining "Address," reveals that the Ohio statute does not require the disclosure of the *home* address of a contributor. The Ohio statute, in fact, allows the use of a *business or residence* address to satisfy the address disclosure requirement. The Akron's Charter Amendment makes no such distinction or allowance.

Plaintiffs maintain that the Intervenors have presented no evidence or argument rebutting the contention that the requirement to disclose a home address is materially chilling to political participation. *Plaintiffs' Reply at 20.* Nor have they presented either evidence or argument rebutting the contention that the objectives of disclosing the geographic and business sources of contributions can be met without such intrusive requirements. *Id.* This Court agrees.

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and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. And third, recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations. *Buckley* at 66-68.

Appendix B

The City of Akron Charter Amendment goes beyond the permissible limitations recognized by *Buckley, supra.* Mandating the disclosure of home addresses as well as identities for all contributors, regardless of amount, is not a restriction sufficiently tailored to withstand constitutional scrutiny. A name and city of residence, or a business address, is sufficient to permit both attribution and verification. Many citizens have *unpublished* home addresses and telephone numbers for very important security reasons. To require the disclosure of such information would seriously impinge the First Amendment rights of anyone who may be reluctant, for security reasons, to reveal his or her home address.[16] The impact of this restriction is that these individuals would either lose their First Amendment right to make a political contribution in Akron, or would have to compromise their safety.

The Intervening Defendants fail to convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest. They have likewise failed to show a sufficient justification for such a

16. In this regard, Plaintiffs make the distinction between disclosure of the contributor's home address to the public, versus disclosure of the home address *to the candidate.* Plaintiffs make it clear that they do *not* challenge the constitutionality of requiring that a contributor disclose a home address *to the candidate. Plaintiffs' Response (Doc. No. 67) at 21.* Plaintiffs recognize that disclosure of a residence address to the candidate is essential for purposes of the candidate's own record-keeping and audit, as well as for satisfying the requirement that a candidate disclose compiled information about the geographic sources of his/her contributions. Thus, Plaintiffs are only challenging the requirement that a contributor's home address be *publicly* disclosed and identified.

limitation, or that the restriction is narrowly tailored. If there were a significant interest in public disclosure of what percentage a given candidate's contributions came from outside the City of Akron, for example, this could be accomplished by the requirement that each contributor list the *city* of residence, without having to disclose the actual street address.

Accordingly, Section 5(G)(1) cannot withstand constitutional scrutiny.

4. *Subsection G(2)—Identification of primary employer by any contributor of $50 or more:*

G. *DISCLOSURE*

(2) Employer Identification: The candidate for any municipal office shall identify all persons who contribute $50 or more by primary employer. If this information is not on file with the Summit County Board of Elections, the contribution shall be returned to the contributor within thirty (30) days after the filing of the candidate's Financial Report.[17]

Supplement to Complaint; Exhibit 1, Section 5(G)(2).

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17. Plaintiffs reiterate the fact that they do not challenge the public disclosure of the source of contributions compiled by employer and thus, to the disclosure of employer information by contributors to candidates, for record keeping and audit. *Plaintiffs' Reply at 22.*

In support of this restriction, the Intervening Defendants state that "disclosure of the primary employer for those contributors of $50.00 or more is reasonable regulation designed to fulfill the purpose of reducing corruption in Akron politics." *Intervening Defendants' Resp. (Doc. No. 57) at 14.*

The Intervening Defendants again point to the existing Ohio statute that requires disclosure of a contributor's current employer (or occupation if the contributor is self employed) where the amount of the contribution exceeds $100.[18] In comparing Akron's Section 5(G)(2) with the provisions of Ohio Revised Code § 3517.10,[19] the Intervening Defendants state: "the State of Ohio already mandates

18. O.R.C. § 3517.10(B)(4)(b)(ii) requires disclosure of the following in an itemized expenditure statement:

> If a campaign committee of a statewide candidate or candidate for the office of member of the general assembly receives a contribution from an individual that exceeds one hundred dollars, the name of the individual's current employer, if any, or, if the individual is self-employed, his occupation.

19. Other than *Lukens v. Brown,* 368 F.Supp. 1340 (S.D. Ohio 1974); and *Lukens v. Brown,* 34 Ohio St.2d 257 (1973), there have been no other reported constitutional challenges to O.R.C. §3517.10. In *Lukens* the plaintiff filed both in federal court, as well as in state court, challenging the constitutionality of §3717.10's requirement that within 45 days of the election, candidates file a sworn statement covering campaign receipts and expenditures. Both the federal court and the Ohio Supreme Court ruled that the requirement withstands constitutional scrutiny. There are no reported cases in which the employer disclosure provision has been challenged.

employer disclosure of all contributors in excess of $100 for statewide office or seats in the General Assembly," and that Plaintiffs fail to offer any evidence "to distinguish how a $101.00 contribution lawfully triggers disclosure of employer but the same type of disclosure at $50.00 impairs constitutional rights." *Intervening Defendants' Resp. (Doc. No. 57) at* 15-16. "Our local ordinance, by requiring disclosure of employers at the $50.00 level and above, is not a difference in kind from that regulation especially given the size of Akron's municipal elections." *Intervening Defendants' Resp. (Doc. No. 58) at 12.* This Court agrees.

The Court cannot find a substantial difference in kind between Akron's employer disclosure requirement, triggered at the $50 level, and that of Ohio's, triggered at the $100 level. The amounts are too close for this Court to say that Akron's Charter Amendment Section 5(G)(2) cannot stand when the state statute has been in effect for over twenty-five years.[20]

The Court also finds that the alleged intrusions upon the privacy rights of contributors as a result of this mandated disclosure are minimal, at best. Certainly, the public disclosure of one's employer is far less intrusive than the public disclosure of an individual's home residence. Plaintiffs have presented no case law to support the view that the

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20. It is significant to note that the federal statute also has a low public disclosure threshold. Disclosure of employer information is required for contributions over $200 in a calendar year. 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.3(a)(4)(i).

Charter provision requiring employer disclosure is unconstitutionally burdensome.[21]

The Court therefore declines to strike down the City of Akron's Charter Amendment Section 5(G)(2) as an unconstitutional infringement on First Amendment rights. This provision therefore stands[22] and Plaintiffs' motion for summary judgment with respect to this provision is DENIED.

IV. INJUNCTIVE RELIEF

The Supreme Court has taught that the abridgement of First Amendment freedoms constitutes irreparable injury. *Elrod v. Burns,* 427 U.S. 347, 373-74 (1976); *San Diego Committee v. Governing Bd.,* 790 F.2d 1471, 1473 n. 3 (9th Cir. 1986); *see also Lydo Enterprises, Inc. v. City of Las Vegas,* 745 F.2d 1211, 1213 (9th Cir. 1984) ("any loss of First Amendment rights, even briefly, can constitute irreparable injury"). Moreover, no adequate legal redress is available for such a violation.

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21. See Plaintiffs' Reply at 22. "The balancing of these competing interests of privacy and disclosure is fundamentally a matter of judgment for the Court."

22. Section 5(H) of the Charter Amendment, entitled *SEVERABILITY,* provides that:

> If any provision of the amendment, or the application of a provision to any person or circumstance, is held to be invalid, the remainder of this amendment, and the application of the provisions to any person or circumstance, shall not be affected by the holding.

Under these circumstances, and because the constitutional violations demonstrated by Plaintiffs are, by their nature, irreparable, and no adequate legal redress can compensate for the loss of political expression, issuance of a permanent injunction is mandated.

Therefore, the City of Akron, its officers, agents, servants, and employees are hereby PERMANENTLY ENJOINED from implementing, enforcing, or acting in reliance upon Subsections C, D, and G(1) of Section 5 of the Charter Amendment.

IT IS SO ORDERED.

s/ Dan Aaron Polster
United States District Judge
Dan Aaron Polster

Appendix B

EXHIBIT A

ORDINANCE NO. ___-1998 authorizing and directing the submission to the electors of the City of Akron of a proposal to supplement the Charter of the City of Akron by the addition of a new Section 5. "Campaign Finance Reform" to be voted upon at the next regular municipal election on November 3, 1998; and declaring an emergency.

WHEREAS, the Dollars and Democracy group have presented to Council a sufficient number of signatures to place a proposed Charter amendment on the ballot pursuant to Section 136 of the Charter of the City of Akron, Article XVIII §§8 and 9, Article XVII, §1 of the Ohio Constitution, and Revised Code Title 35.

NOW, THEREFORE, BE IT ENACTED by the Council of the City of Akron:

Section 1. That Council hereby authorizes and directs the submission to the electors of The City of Akron at the next regular municipal election to be held at the usual places of voting in the City of Akron on November 3, 1998, between the hours of 6:30 a.m. and 7:30 p.m. Eastern Standard Time of that day, of a proposal to amend the Charter of the City of Akron.

Section 2. That the ballots for the election referred to in Section 1. of this ordinance shall, at the top thereof, be entitled "City of Akron Proposed Charter Amendment", and the question to be submitted on those ballots shall be as follows:

Appendix B

Charter Issue No. ____- Shall the proposed amendment to the Charter of the City of Akron be adopted to add a new Section 5. which shall provide as follows:

Section 5. CAMPAIGN FINANCE REFORM

A. *PREAMBLE.* In order to demonstrate and promote ethics by government within the City of Akron: to further integrity in campaigns for public offices to prevent corruption and/or the appearance of corruption: and the restore and enhance the faith of the citizenry in government, we the people of this city do hereby establish this Amendment to the Charter of the City of Akron on Campaign Finance Reform.

B. *FUNDRAISING SEASON.* The fundraising season for the purpose of election or re-election to the offices of Mayor or City Council shall commence on the 1st day of December prior to the General Election and end on the Thursday preceding the General Election. Campaign fundraising at other times is prohibited.

C. *LIMITS ON CASH CONTRIBUTIONS.* No candidate for Mayor or City Council shall accept, as a campaign contribution, more than $25 in cash (i.e. hard currency) from any person within any fundraising season. No person shall contribute cash in excess of said amount.

Appendix B

D. *LIMITS OF NONCASE MONETARY AND IN-KIND CONTRIBUTIONS AND LOANS.* No candidate for Mayor or At-Large Council shall accept or solicit, as a noncash monetary (i.e. checks, money orders, credit cards) or in-kind campaign contribution or loan, more than $300 from any person, campaign committee, political party, or political action committee. No candidate for a Council Ward position shall accept or solicit, as a noncash monetary or in-kind campaign contribution or loan, more than $100 from any person, campaign committee, political party, or political action committee.

No person, political action committee, political party or political campaign shall contribute funds or in-kind contributions in excess of said amounts. Contributions from the candidate and labor of volunteers are exempt from these provisions.

E. LIMITS ON NONRESIDENT CONTRIBUTION. No candidate for Mayor or At-Large Council shall accept more than 25% of the total aggregate contribution accumulated during the fundraising season from natural persons who reside outside the City of Akron.

F. *SURPLUS CAMPAIGN FUNDS DEPOSIT.* Within sixty (60) days following a General Election a candidate for municipal office shall turn over any balance of campaign funds over expenses incurred at the time of and within 30 days after the election

either to the General fund for the City of Akron for the benefit of the citizenry or to one or more local charities recognized by the U.S. Internal Revenue Service as a 501(c)(3) organization.

G. *DISCLOSURE.*

(1) Home Address: All persons who make any financial contribution or loan to any campaign for municipal office shall be listed by home address on the candidate's Financial Report filed with the Summit County Board of Elections.

(2) Employer Identification: The candidate for any municipal office shall identify all persons who contribute $50 or more by primary employer. If this information is not on file with the Summit County Board of Elections, the contribution shall be returned to the contributor within thirty (30) days after the filing of the candidate's Financial Report.

(3) Friday Report: All candidates for Mayor or City Council shall submit a Campaign Finance Report to the Clerk of City Council by noon on Friday prior to the Primary Election and General Election. This report shall identify all campaign contributions and expenditures made as of said Friday and this report shall be available for public viewing by the Clerk of City Council at the Akron Municipal Building within an hour after the filing deadline.

H. *SEVERABILITY.* If any provision of the amendment, or the application of a provision to any person or circumstance, is held to be invalid, the remainder of this amendment, and the application of the provisions to any person or circumstance, shall not be affected by the holding.

I. *PENALTIES.* Any violation of this Amendment is an offense to be reported to the Akron Police Department and is punishable as a misdemeanor of the first degree according to provisions specified in §136.20 (Official Misconduct), Subsection (E), and §136.21 (Soliciting or Receiving Improper Compensation), Subsections (D) and (E) of the Code of Ordinances of the City of Akron.

J. *ENABLING LEGISLATION.* City Council shall forthwith enact provisions necessary to enforce these Charter sections.

Section 3. That is the desire and request of this Council that the ballot for the Charter amendment question referred to in Section 2. of this ordinance shall be substantially in the following form:

PROPOSED CHARTER AMENDMENTS

CITY OF AKRON

A Majority Affirmative Vote Is

Appendix B

Necessary For Passage

Shall the Charter of the City of Akron be supplemented by the addition of a new Section 5. which would regulate campaign finances in municipal office races by establishing a fundraising season, limiting cash contributions, limiting the amount of contributions, restricting contributions from nonresidents, mandating the forfeiture of unused campaign funds, requiring certain disclosures about contributors, penalizing violations of these restrictions, and empowering the City Council to enact provisions to enforce these restrictions?

YES

NO

Section 4. That the Clerk of Council is hereby directed to certify a copy of this ordinance to the Board of Elections of Summit County, Ohio, immediately upon the passage of this ordinance.

Section 5. That the Clerk of Council is hereby directed and authorized to have the full text of the above proposed Charter amendment published once a week for not less than two (2) consecutive weeks in a newspaper published and of general circulation in the City of Akron with the first publication being at least fifteen (15) days prior to the election at this amendment is to be submitted to the electors of the City.

Appendix B

Section 6. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety and welfare for the further reason that its immediate effectiveness is necessary to place this proposed amendment to the Charter on the November ballot, and provided this ordinance receives the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

Passed September 3, 1998

s/ Vincent Ciraco
Clerk of Council

s/ John R. Otterman
President of Council
Pro Tem

Approved _____, 1998

_____

MAYOR

Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. 5:98 CV 2862

JUDGE DAN AARON POLSTER

JOHN V. FRANK, et al.,

Plaintiffs,

vs.

CITY OF AKRON, et al.,

Defendants.

JUDGMENT ENTRY

For the reasons set forth in the Memorandum of Opinion filed contemporaneously with this Judgment Entry, and pursuant to Rule 58 of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the motion for summary judgment of Plaintiffs' (Document No. 36) is GRANTED in part. Subsections C, D, and G(1) of Section 5 of the Charter to the City of Akron are unconstitutional, and the City of Akron is permanently enjoined from enforcing these provisions. Subsection G(2) of Section 5 is not unconstitutional, and may be enforced. It is further ORDERED, ADJUDGED and DECREED that judgment be entered in favor of Plaintiffs herein with respect

to Subsections C, D, and G(1) of Section 5 of the Charter, and in favor of the Intervening Defendants with respect to Subsection G(2) of Section 5 of the Charter. Accordingly, the above captioned action is hereby dismissed with prejudice.

IT IS SO ORDERED.

s/ Dan Aaron Polster
Dan Aaron Polster
United States District Judge

APPENDIX C — AMENDED ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DATED AND FILED SEPTEMBER 9, 2002

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 00-3050/3070

JOHN V. FRANK; MARCO SOMMERVILLE; JOHN W. VALLE; ROBERT G. KONSTAND; GERALD HOLLAND; NANCY HESLOP; CHARLES WALKER,

Plaintiffs-Appellees/ Cross-Appellants,

v.

CITY OF AKRON,

Defendant-Appellee,

BRUCE KILBY; MIKE PARSONS; PATRICIA LONGVILLE; GREGORY D. COLERIDGE; THE YES ON 11 CAMPAIGN,

Intervenors-Appellants/ Cross-Appellees.

Filed: September 9, 2002

Before: MERRITT, CLAY and GILMAN, Circuit Judges.

Appendix C

AMENDED ORDER

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and less than a majority of the judges having favored the suggestion, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Clerk

Appendix C

DISSENT FROM DENIAL OF REHEARING EN BANC

BOGGS, Circuit Judge. Under the First Amendment, citizens have very broad rights to attempt to persuade their neighbors of the correctness of social and political propositions, and even to attempt to advance those views by supporting the election of candidates to public office. While cases such as *Buckley v. Valeo*, 424 U.S. 1 (1976), and *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377 (2000), have indicated that those rights can be restricted, it can only be done after careful scrutiny of the proposed regulations and their effect on core constitutional values. With respect to two portions of the City of Akron ordinance, I believe that the court's opinion is considerably too cavalier in upholding governmental intrusion on these values. I therefore respectfully dissent from the denial of rehearing en banc as to those provisions.

Ever since cases such as *Bates v. City of Little Rock*, 361 U.S. 516 (1960), it has been clear that coerced revelation of one's political activity and associations can be a means of assisting coercion and repression of those views, and must be judged under First Amendment standards. The Akron ordinance has a feature that appears not to exist in any other litigated campaign regulations statute: it requires everyone who wants to contribute to a political candidate to reveal his or her home address. The court's opinion, in a very short *ipse dixit*, overturns the district court's holding of unconstitutionality of this provision based on our court's assertion that there is "no meaningful distinction" between being required to list a mailing address and a home address, and its notation that most individuals' homes can be located through the phone book or the internet.

Appendix C

In light of the constitutional protection that the Supreme Court has given to even completely anonymous political speech (*see McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995)), the court should have been more concerned about the First Amendment values impinged upon by this type of compelled disclosure. Just as in *Bates*, where the forced revelation of political association with the NAACP made it easier for persons to bring economic or physical pressure to bear on disfavored groups, the forced revelation of home addresses can be extremely chilling to people who may wish to contribute to candidates that may be broadly unpopular, or simply unpopular with particular powerful interests. The very fact that "we know where you live" is a commonplace expression, implying coercion, in movies and the general culture, shows the vast difference between a mailing address (which could be a commercial establishment or Post Office box listing), and the revelation of one's home location and its connection to an unpopular political cause.[1]

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1. With respect to the uses of home addresses, *see* Prana A. Topper, *Note, The Threatening Internet*, 33 Colum. Hum. Rts. L. Rev. 189, 236 (Fall 2002) (discussing the appropriateness of abortion rights advocates posting the home address and other personal information of abortion opponents in responses to the Nuremberg Files case). Also, note that in the context of commercial privacy protections, a home address is considered quite personal information. *See* Jeffrey S. Lehman, address to the Conference on Law, Policy, and the Convergence of Telecommunications and Computing Technologies in 2001 Mich. Telecomm. and Tech. L. Rev. 1 (unpaginated) (Westlaw page 109 of 386); Matthew Diller, et al., *Privatization in Practice: Human Services*, 28 Fordham Urb. L.J. 1435, 1439-40 (2001) (discussing proposed legislation to prohibit contractors from selling

(Cont'd)

Appendix C

It should be noted that courts have been vigilant in protecting even very vigorous negative political activity. In *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 902, 927-28 (1982), the Supreme Court upheld the First Amendment rights of persons who made speeches threatening to "break [your] damn necks" if political opponents undertook certain actions. In *Planned Parenthood of Columbia/ Willamette, Inc. v. Am. Coalition of Life Activists*, 244 F.3d 1007 (9th Cir. 2001), *aff'd in part and vacated in part en banc*, 290 F.3d 1058 (9th Cir. 2002), persons using the internet to post lists of political opponents and expressing pleasure in their injury or death came very close to being accorded First Amendment protection.

Under these circumstances, the knowledge that, as a routine matter, the state can coerce you into helping your political opponents "know where you live" can indeed be chilling. Those persons who may guard their privacy enough to take steps to make their home addresses less accessible (as with the huge numbers of people who do not list their full names, full addresses, or even their phone numbers in

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(Cont'd)

"private information, such as social security numbers, income information and home addresses").

If Judge Merritt, or the reader, believe that the First Amendment considerations for compelled disclosure of the fact that one has a driver's license or is registered to vote are little different from those involved in disclosure of a maximum contribution to (merely for illustration) David Duke or Lenora Fulani — then I am unlikely to be able to persuade them otherwise.

the phone books) might be exactly those who would wish some protection from state-assisted political coercion.

By analogy, a recent case concerning home addresses is instructive. In *Judicial Watch of Florida v. United States Dep't of Justice*, 102 F. Supp. 2d 6 (D.D.C. 2000), a district court that expressed skepticism of the Department of Justice's efforts to avoid revealing letters that had been written to the Department of Justice concerning campaign finance issues specifically did not extend that skepticism to home addresses and telephone numbers, in a case under FOIA. ("There is no public interest which outweighs individual's privacy interests in their home addresses and telephone numbers, and summary judgment accordingly is granted to DOJ as to these redactions."). *Id.* at 17.

The second problematic portion of the opinion concerns the extremely low contribution limits in the Akron ordinance. Citizens are prevented from contributing more than $100 in every election cycle (two years) to city council candidates from individual wards that average over 20,000 residents. This is a smaller limit than has ever been upheld in any other litigation. The court blithely asserts that "local elections such as the ones at issue here rarely rely on the mass media campaigns seen on the national level," without any contemplation of the fact that television advertising is certainly not unknown in mayor and council elections in mid-size metropolitan areas, such as Akron. In particular, such elections can be of intense interests to local media, who are, of course, free to spend unlimited sums in supporting their political friends and vilifying their political opponents. Under these circumstances, one might have thought the court would

have given at least some attention to a limiting principle, if any, by which these radically low limits could be upheld that would not similarly justify incrementally lower limits approaching zero. After all, if an approved limitation is simply half of some previously approved limitation, and if there is no contemplation of a true limiting principle, then the limits can be driven down essentially to zero. *See Zeno's Paradox*, as explicated in, *e.g.*, *United States v. Block*, 452 F. Supp. 907, 909 n. 2 (M.D. Fla. 1978).

For all of these reasons, I believe that the court's support of these efforts that suppress or discourage political association and expression should have been considered further.

Appendix C

RESPONSE TO DISSENT FROM DENIAL OF REHEARING EN BANC

MERRITT, Circuit Judge. Campaign finance reform has become an intensely partisan, national political issue in which the First Amendment is constantly raised as a shibboleth to defeat any regulation of political contributions and any disclosure requirements that our elected officials enact. The judges must intervene to save the day. That is the climate in which this case arises. And that is the context in which my distinguished dissenting colleague, with a Latin legalism, colorfully refers to my discussion of the home address disclosure requirements in this case as "cavalier" "*ipse dixit.*"

I rise to the bait. In defense of my cavalier, *ipse dixit* discussion of Akron's home address disclosure requirement, I should point out, as we did in the opinion, that home addresses are already required as a part of the election process nationwide and in many other contexts. In order to vote, voters must provide local election commissions with their home addresses. Voting, like elections, is always local; and local commissions need to know a person's home address so that the voter can be placed in a voting precinct. These are public records in Ohio and across the country. In order to avoid vote fraud and administer the election process, voters must advise the local election commissions periodically where they live and when they move.

Similar reasons apply to the home address requirement here. In order to enforce finance limitations properly against violators, the enforcement agency needs to know the place where contributors live, how much they gave and how many

times. Voters and candidates have an interest in knowing whether the money is coming from voters in the district or contributors from other districts, cities, states and nations.

Our dissenting colleague characterizes such home address disclosure requirements as "coercive," "chilling" and like the "we-know-where-you-live" threats in James Cagney-type gangster movies. That seems like a bit of an overreaction to my *ipse dixit.* In order to keep campaign contributors free of regulation and disclosure, are we going to declare unconstitutional all state and federal regulations that require home addresses to be given to a governmental agency — election laws, driver's licenses, occupational licenses, taxes, etc.? It is interesting that our dissenting colleague has not cited a single appellate case which has ever invalidated such a home address disclosure requirement. Is the First Amendment principle he favors just limited to laws that attempt to regulate campaign finance?

Given the weakness of the constitutional argument against home address disclosure, we should not politicize the First Amendment so that it becomes the means of defeating limitations on contributions and disclosure requirements disfavored by particular political groups. Perhaps my *ipse dixit* was too cryptic, but the basic point remains sound.

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DATED AND FILED AUGUST 22, 2002

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN V. FRANK,

Plaintiffs-Appellees/
Cross-Appellants,

v.

CITY OF AKRON,

Defendant-Appellee,

BRUCE KILBY, ET AL.,

Intervenors-Appellants/
Cross-Appellees.

ORDER

BEFORE: MERRITT, CLAY and GILMAN, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and less than a majority of the judges having favored the suggestion, the petition for rehearing has been referred to the original panel.

Appendix D

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green
Leonard Green, Clerk

APPENDIX E — CHARTER AMENDMENT

Section 5. CAMPAIGN FINANCE REFORM

A. *PREAMBLE.* In order to demonstrate and promote ethics by government within the City of Akron: to further integrity in campaigns for public office: to prevent corruption and/or the appearance of corruption: and the restore and enhance the faith of the citizenry in government, we the people of this city do hereby establish this Amendment to the Charter of the City of Akron on Campaign Finance Reform.

B. *FUNDRAISING SEASON.* The fundraising season for the purpose of election or re-election to the office of Mayor or City Council shall commence on the 1st day of December prior to the General Election and end on the Thursday preceding the General Election. Campaign fundraising at other times is prohibited.

C. *LIMITS ON CASH CONTRIBUTIONS.* No candidate for Mayor or City Council shall accept, as a campaign contribution, more than $25 in cash (i.e. hard currency) from any person within any fundraising season. No person shall contribute cash in excess of said amount.

D. *LIMITS ON NONCASH MONETARY AND IN-KIND CONTRIBUTIONS AND LOANS.* No candidate for Mayor or At-Large Council shall accept or solicit, as a noncash monetary (i.e. checks, money orders, credit cards) or in-kind

campaign contribution or loan, more than $300 from any person, campaign committee, political party, or political action committee. No candidate for a Council Ward position shall accept or solicit, as a noncash monetary or in-kind campaign contribution or loan, more than $100 from any person, campaign committee, political party, or political action committee. No person, political action committee, political party or political campaign shall contribute funds or in-kind contributions in excess of said amounts. Contributions from the candidate and labor of volunteers are exempt from these provisions.

E. *LIMITS ON NONRESIDENT CONTRIBUTION.* No candidate for Mayor or At-Large Council shall accept more than 25% of the total aggregate contribution accumulated during the fundraising season from natural persons who reside outside the City of Akron.

F. *SURPLUS CAMPAIGN FUNDS DEPOSIT.* Within sixty (60) days following a General Election a candidate for municipal office shall turn over any balance of campaign funds over expenses incurred at the time of and within 30 days after the election either to the General Fund for the City of Akron for the benefit of the citizenry or to one or more local charities recognized by the U.S. Internal Revenue Service as a 501(c)(3) organization.

Appendix E

G. *DISCLOSURE.*

(1) Home Address: All persons who make any financial contribution or loan to any campaign for municipal office shall be listed by home address on the candidate's Financial Report filed with the Summit County Board of Elections.

(2) Employer Identification: The candidate for any municipal office shall identify all persons who contribute $50 or more by primary employer. If this information is not on file with the Summit County Board of Elections, the contribution shall be returned to the contributor within thirty (30) days after the filing of the candidate's Financial Report.

(3) Friday Report: All candidates for Mayor or City Council shall submit a Campaign Finance Report to the Clerk of City Council by noon on Friday prior to the Primary Election and General Election. This report shall identify all campaign contributions and expenditures made as of said Friday and this report shall be available for public viewing by the Clerk of City Council at the Akron Municipal Building within an hour after the filing deadline.

H. *SEVERABILITY.* If any provision of the amendment, or the application of a provision to any person or circumstance, is held to be invalid, the remainder of this amendment, and the

application of the provisions to any person or circumstance, shall not be affected by the holding.

I. *PENALTIES.* Any violation of this Amendment is an offense to be reported to the Akron Police Department and is punishable as a misdemeanor of the first degree according to provisions specified in §136.20 (Official Misconduct), Subsection (E), and §136.21 (Soliciting or Receiving Improper Compensation), Subsections (D) and (E) of the Code of Ordinances of the City of Akron.

J. *ENABLING LEGISLATION.* City Council shall forthwith enact provisions necessary to enforce these Charter sections.